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The American
Political Science Review

VOL. XLIII APRIL, 1949 NO. 2

LAW AS AN OBJECTIVE POLITICAL CONCEPT

G. LOWELL FIELD
Wayne University

"You're a lawyer," Hugh Miller said.

"No," the Boss corrected, "I'm not a lawyer. I know some law. In fact, I know a lot of law. And I made some money out of law. But I'm not a lawyer. That's why I can see what the law is like. It's like a single-bed blanket on a double bed and three folks in the bed and a cold night. There ain't ever enough blanket to cover the case, no matter how much pulling and hauling, and somebody is always going to nigh catch pneumonia. . . ."[1]

I. INTRODUCTION

The Need for Factually Defined Concepts. Most political utterance is necessarily normative in import since it occurs in the process of motivating human behavior. Popularly employed political concepts, appropriately, are frequently of the ideal type in that they tend to denote an hypothetical situation toward conformance with which actual human institutions are being impelled. Ask any student to define a state or a government and he is almost certain to bring in some such notion as "operation in the public interest," which might or might not be judged applicable to an actual situation. It is safe to say that ninety per cent of the time such concepts as state, government, court, law, administration, political party, and many others are used in this normative sense, not only popularly but in learned circles.

Without desiring the exclusion of the normative from the social sciences, the writer believes that rigid conceptual clarity in distinguishing norm and fact is necessary for the progress of these disciplines. To attain this goal, the technical requisite is a system of concepts having an understood reference of a purely factual character. The absence of such factually defined concepts is noteworthy

[1] Robert Penn Warren, *All the King's Men* (New York: Harcourt, Brace and Co., 1946), p. 145.

in political science, and largely unrecognized. Although most of our studies are factual in nature and the intended reference of concepts is usually factual, definition is largely subconscious and when brought to the surface is likely to have normative form, particularly a form borrowed from legal norms.

True definition is appropriate in such disciplines as logic and mathematics and in physics, which has attained since the seventeenth century to the explanation of phenomena by hypothetical systems employing purely postulated entities like electrons and atoms. A set of pure definitions gives postulates from which theorems are derived by rigid deduction. What is put into the definitions comes out in the theorems. The method of physics, which is what is usually meant by the term "scientific method," involves the testing and reconstruction of such hypothetical systems by checking their theorems with observed phenomena. In other studies, except in so far as their subject-matter (as largely in chemistry and considerably in biology) overlaps that of physics, and hence can be handled as a branch of physics, science mainly involves arranging and cataloguing phenomena to see whether, given a certain arrangement, they make more sense than when crudely perceived.

It is true that the hypothetical method may be used in any field, and this is the only way in which strictly causal explanation may be expressed. When this is done, by implication at least a true definition is substituted for the natural history type of description and the validity of the reasoning depends upon the plausibility of such substitution. However, in most fields such hypothetical concepts are usually crude abstractions from phenomena and permit very limited chains of deduction before revealing in their theorems the inadequacy of the postulates. They do not yield *systems* of reasonably high validity like those historically associated with such names as Newton and Einstein in physics. Since we can go at present only a little way with truly defined concepts, our attention should be concentrated upon the ordering of the phenomena with which we must deal by concepts of the natural history type.

Factual concepts of the natural history type are produced by describing a "type" and giving it a name. The eventual extension of the term is not originally indicated. It will be used for phenomena resembling the type until a need appears for distinguishing a subtype. The latter can then be described and named and, if necessary,

a descriptive qualification can be given to the original term, now restricted by the recognition of the new one. The application of this procedure to political concepts was advocated by the writer in an earlier article, and descriptive definitions were there offered for such concepts as state, various parts of governmental establishments, and various types of partisan political organization.[2] It was there recommended that when a normative prescription has actually been steadily associated psychologically with a given institution, such a norm be referred to in the description, but as pure ascription. Thus we would say that the executive branch is the residue of the undifferentiated establishment after the modern differentiation of the legislative assembly and the courts and that it usually is *thought of* as enforcing the law. Thus the norm does not become diagnostic in the factual concept. In identifying an executive agency, the question of whether its operation actually involved anything which could be called law enforcement would be irrelevant. The present article seeks to extend this system of factual definition to the phenomena of law.

Fact-Fictions as Organizing Social Concepts. A peculiar difficulty of the social sciences is the necessity of treating as facts certain ideas the contents of which are largely fictional. Such fictions are not merely the products of popular ignorance, which might be eradicated by education, though vulgar errors must be included among social facts. More significant are certain necessary organizing concepts of social life which cannot be dispensed with in the most sophisticated thinking. From the standpoint of scientific politics, no fact-fiction has given rise to more conceptual confusion than law.

The Double Reference of Social Concepts. Conceptual intermingling of fact and norm arises in social thinking from the inevitable association in consciousness of any observable social configuration with a set of norms that seems to regulate interrelations within the configuration. In appearance, the set of norms determines the configuration and, if the question of the factual nature of the set of norms itself is not raised, it may with some plausibility be equated with the institution itself. Thus the simpler kind of social concept, referring to an organized body of people or to an institution having dramatic constancy but changing participants, usually has a double

[2] "Toward a More Objective Definition of Political Concepts," *Southwestern Social Science Review*, Vol. 27 (1946), pp. 7–25.

reference (1) to an observable institution and (2) to the accepted norms which prescribe the form such an institution should have. The frequent presentation of the latter as the institution itself appears to be an essential part of the social mechanism by which an institution is perpetuated.

In cases of the more observable entities, however, scientific investigation is little inconvenienced by the habit of institutions to parade in the garb of their norms. They are frequently enough caught in the act of behaving in ways inconsistent with these norms, and the fact-minded observer has little difficulty in analyzing their actual behavior if he desires to do so.

When the concern of factual investigation extends to the norms themselves, conceptual confusion is difficult to avoid. On the one hand, the normative system of a given institution appears as if fictional, since the institution does not always operate as its norms prescribe. On the other hand, the consciousness of the norms is evidently a fact motivating social behavior within the form of the institution. Wherein lies the fiction, and what is the nature of the norm as fact? What specifically is fictitious and what is real with respect to a normative system: the individual norms, the system, or assumptions as to what their factual effects would naturally be?

Juristic versus Scientific Analysis. Mingling two different intellectual disciplines often accentuates the confusions encountered in the interpretation of social phenomena. Analytically considered, the techniques of the jurist and of the social scientist are distinct. In practice, the social scientist often adopts the juristic approach and, influenced by the basically scientific aura of modern culture, jurists frequently approach their problems with the attitudes of social scientists. Both juristic and social scientific analysis is likely to be necessary in the practical elucidation of any serious social problem. To keep the two analyses distinct in popular discussion is practically impossible. To attempt such a sharp distinction in scholarly investigation will frequently seem pedantic. Yet the distinction is essential to conceptual clarity in spite of the fact that, considered as individual persons, a competent political scientist must also be something of a jurist and a progressive jurist must also be something of a social scientist.

Nevertheless, legal reasoning and scientific reasoning are different procedures to which different rules of method apply. This is not because of the "normative" content of the former and the "factual" content of the latter, since both norms and facts require to be

handled by both disciplines. Rather we may distinguish two forms of normative reference: the sponsored norm and the authoritative norm. If I say that labor organization ought to be encouraged by such legislation as the former Wagner Act, I sponsor the content of this norm. By implication, I assert that I could "prove" the content of the norm which I assert. The assertion of an authoritative norm has a different implication. If I say that it is *legally* wrong for two persons who have always resided in North Carolina, both "divorced" from former spouses by a Nevada decree, to "marry" each other in North Carolina, I assume no sponsorship for the content of this norm. I merely imply that I could show its sponsorship by an appropriate authority, the Supreme Court.

A science involves reasoning from propositions all of which are treated as potentially verifiable, that is, subject to future confirmation or rejection on the basis of experience. Since no single investigation can embrace the universe, many peripheral propositions will in fact be taken for granted in any investigation. These assumptions, however, are protected only by the expedient scope of investigation. No inherent authority attaches to them which would in principle protect them from question.

In the reasoning of a jurist, only certain propositions may be treated as subject to verification as far as their contents are concerned. It is the nature of law to embrace rules of an authoritative character, whose verification in principle is only the determination that they have had authoritative sponsorship. Granting their authority, the jurist as jurist may not question their validity. In behavioristic terms, he must at least appear to use the propositions to which his legal system gives the stamp of authority. Though in practice over the years his profession may transform or destroy such authoritative rules, subterfuges of reasoning are likely to be necessary, and the nature of his task requires at least the appearance of respect for authority.

Though propositions taken as authoritative are antithetical to scientific hypotheses, their practical operation is not necessarily incompatible with the activities of a scientist. Any planned or organized activity takes certain rules of conduct for granted. For a scientist, the norms of the organization within which he works are temporarily authoritative propositions. It is the fact that the jurist is professionally engaged in the very exposition of rules of this sort that is his professional distinction.

In so far as his professional function as an expounder of the law

is concerned, the jurist can only to a limited degree act as a scientist. That he can do so at all comes from the fact that textual exegesis is not in fact a logically rigid procedure. As Holmes has said, "general propositions do not decide concrete cases."[3] Yet the necessity of using a set of established general propositions, as will be more fully discussed below, is not without effect. As a critic of the law and as a proponent of legislation, the jurist in principle may be fully scientific. But these are not the activities for which a distinct legal profession is trained.

The Scientific Inadequacy of Juristic Definitions of Law. Because of these differences of technique and of approach, it is not surprising that definitions produced by the jurists of their own subject-matter largely fail in identifying the objective phenomenon called law, with which social science must deal. Of juristic concepts of law at one extreme stand various kinds of naïve legalism, which take for granted that rules antedate their application in cases. This view may take various forms. Thus the ethical natural law theories see positive law as resting upon a delegated authority from a system of immutable principles with which its valid contents must be in harmony. Likewise crude legal positivism declares quasi-factually that law is the command of a specified social agency. Views of these sorts, taken in a factual sense, find little confirmation in observed judicial processes or in the historical development of legal systems. At the opposite extreme is Frank's legal realism.[4] Here little is asserted which is not observable in the conduct of lawyers and judges, but nothing is asserted about the phenomenon generally called law,[5] except perhaps its insignificance. In essence, Frank offers a theory of legal professional activity in the guise of a theory of law. By rendering all legal rules (except the decisions of individual cases) nugatory, he pictures legal professional activity as indistinguishable from any other phase of public administration or of social activity generally. No layman could make this mistake. In this form, jurisprudence escapes to the realm of science by the specious expedient of arguing its own subject-matter out of existence.

A more objectively acceptable concept of law is implied in the

[3] Lochner v. New York, 198 U. S. 45, 76.

[4] Jerome Frank, *Law and the Modern Mind* (New York, 1936).

[5] "This stock of rules and principles is what for most purposes we mean by law." Benjamin W. Cardozo, *The Growth of the Law* (New Haven, 1944), p. 43.

writings of many American jurists who like Holmes and Cardozo take a middle ground between the extreme positions. Here, however, we refer to practical insights rather than theoretical formulations, since such writers generally distinguish themselves from "the philosopher, who approaches the law from without as part of a larger series of manifestations" and mainly content themselves "to work upon it from within."[6]

Most rigorous in methodology among modern juristic theories is unquestionably Kelsen's "pure theory of the law." The view here presented owes much to the analyses of that school. Whatever may be its value as a tool of jurisprudence, however, its strict devotion to Kelsen's conception of "pure" jurisprudence leaves it with limited relevance to the work of the social scientist. Kelsen's concern is with the inner, or logical, aspect of a system of norms. In essence, he refines the command theory of law of its crudities. In so doing, he really leaves only a scheme of pure delegation (the "steps and stairs" worked out by his disciple Merkl),[7] a convenience in the classification of norms, but without relevance to the very large element of prescription of conduct which is an observable part of any system of law.

II. THE FORM OF A NORMATIVE SYSTEM: ITS INHERENT CONTRADICTION

A norm is a statement not avowedly fictional and either relating to the future without having the sense of a prophecy or relating to the past or present without having the sense of a statement of fact. Its essence, the sense of "ought" is probably unanalyzable except perhaps obliquely in terms of psychology and behavior.[8] Grammar sometimes distinguishes the norm, but very frequently does not. The social mechanism by which norms parade as facts is reflected in the frequent expression of norms in simple declarative form. Behavioristically, a norm may be uttered as a standard of judgment or as an incentive or cause of future events through its presumed, or hoped for, effect upon persons who accept it as intrinsically valid or

[6] Oliver Wendell Holmes, *The Common Law* (Boston, 1881), p. 219.

[7] See William Ebenstein, *The Pure Theory of Law* (Madison, Wis., 1945), pp. 127–128, and Hans Kelsen, *General Theory of Law and the State* (Cambridge, Mass., 1946), pp. 123–124, 153–162, especially p. 159.

[8] See Karl Olivecrona, "Law as Fact," in *Interpretations of Modern Legal Philosophies; Essays in Honor of Roscoe Pound* (New York: Oxford University Press, 1947), especially pp. 545–546.

as authoritative. The subjective intent of the utterer (if determinable) cannot, however, serve as the criterion. Thus a prophecy may be uttered without confidence in its truth, but rather with a view to causing events, and a norm may be uttered to keep the record straight, without confidence in its influence. Only the sense in which the statement in its context performs a social function needs to be considered. Like any other proposition, a norm may be viewed (1) as a fact in that it has been uttered or (2) as to the validity in some sense of its content. This study is not directly concerned with the second viewpoint.

A system of norms consists of several norms which are viewed as historically and socially related and as contemporaneously valid or invalid. This implies the logical consistency of their content, but for the social fact of a system of norms the appearance suffices. Norms in a system may (1) prescribe conduct or (2) authorize someone to prescribe conduct (his own or that of others). An example of the first type is the provision in the Constitution of the United States: "No person shall be . . . deprived of life, liberty, or property without due process of law . . . "; of the second: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Provisions of the first sort may be called *contentual* and those of the second *delegatory*.

Delegation, which confers discretion (or a right to choose among alternatives), is logically inconsistent with any contentual norms not arising from the delegation. Thus if the "due process" clause is authoritative, any decision of the courts which in any person's opinion does not allow due process cannot logically be regarded by that person as authoritative. If the delegation of the judicial power is authoritative, then the "due process" and every other contentual provision mean whatever the courts say they mean. In other words, such provisions have no existence themselves as authoritative rules conveying meaning. But all systems of norms which exist as social facts contain both kinds of provisions. This embodiment of a logical impossibility is the first clue to the fictional aspect of normative systems.

III. THE INTERNAL LOGIC OF A DELEGATORY SYSTEM OF NORMS

To give a system of norms an internal or logical consistency of form requires some method of eliminating the logical inconsistency

of contentual and delegatory provisions. Since the incompatibility is fundamental, it can be eliminated only by making nugatory one or the other type of rule. But law and perhaps most other accepted systems of norms are hopelessly intermingled with social organization, and the latter is meaningless without agents, organs, and authorities competent to act for the group. The delegatory norms, therefore, are ineradicable. Thus if we seek absolute logical consistency within a system of norms, we are driven to reinterpret it after the manner of the pure theory of law in the steps and stairs version of Merkl. In this form, the system consists of a series of delegatory norms belonging to graded levels of authority (for example: constitution, statute, administrative act, private contract, judicial decision). At each level, contentual provisions may occur; but these are hardly more than decorative, because each level delegates authority to make valid norms not merely in accord with its contentual provisions but also (once procedural forms of annulment are exhausted) to make norms contrary to its contentual provisions. In this viewpoint, the Constitution of the United States not only confers upon the courts (and other authorities) the authority to apply its contentual provisions, but also (if after the highest legal appeal has been taken an erroneous interpretation is still uncorrected) it gives equal authority to disregard or misapply its contentual provisions.

It may seem that the purely delegatory view of law is a concession of jurisprudence to the social facts of power. In inspiration, this may well be so. Nevertheless, this interpretation is primarily a logical expedient for giving internal consistency by a *tour de force* to a normative system which, externally viewed as a social phenomenon, objectively contains both the elements found to be logically discordant. Whether or not it may be useful to the jurist so to minimize the contentual provisions of a system of norms, the scientific observer cannot do so. It is impossible to say that the contentual provisions of an accepted system of norms lack social significance.

IV. THE FACTUAL BASIS OF A NORMATIVE SYSTEM

What, then, are the external aspects of a system of authoritative norms as seen by an observer who wishes to analyze it, but who is not under obligation (as is the jurist) to expound its contents in a logically consistent fashion? Two parts of the objective concept of

a system of authoritative norms may be distinguished. One of these may be analyzed into items which themselves have verifiable factual existence. The other part consists of a necessary tendency of thought associated with a normative system, itself a social fact, but whose content upon analysis can be seen to be fictional.

The first or strictly factual element of a system of norms consists of two sorts of phenomena: (1) authoritative texts having a verbally fixed form and which can, therefore, be quoted literally, and (2) supposed rules or principles which are referred to or expounded in various contexts, but whose identity consists not in any fixed form of words but only in an historical sequence of supposed common reference. Thus any textual passage from the United States Constitution or statutes would fall in the first class, and all the myriad "derived" and common law principles to which lawyers refer, in the second. An instance of the second type of phenomenon is the derived constitutional rule which I may state with some degree of confidence in the following form, but which others would phrase differently: The president may remove from office at discretion, regardless of the provisions of any statute, any officer appointed by him who is not a judge or a quasi-judicial officer. The numerous rules of common law liability in tort may also be mentioned, for example, those referred to by the designations "contributory negligence," "last clear chance," and "attractive nuisance." For our purposes, being primarily concerned with law, we may call rules of the former sort *enactments* and those of the latter type *doctrines*.

The distinction just made between two forms of socially recognized norms corresponds in intent with the common dichotomies of written and unwritten law or written and unwritten constitutions. The distinction in common use, however, is unduly arbitrary. In preliterate societies, formulae may frequently be memorized and recited verbatim. These would be functionally analogous to our enacted norms, the possible inaccuracy of repetition over a period of time being irrelevant as long as an agreed verbal form was accepted at a given time. In literate societies, rules of the second sort will not long remain unwritten. A complex tradition will have its literature if the art of writing is known. The only functional distinction is between rules which have a fixed form of words and those traditional modes and forms of argument, variable maxims, and doctrinal rules which may be freely reformulated in use. The emphasis upon rules of one sort or the other is not without effect upon the social character of an authoritative system of norms.

V. THE NECESSARY FICTION OF COMPLETENESS IN AN EFFECTIVE SYSTEM OF NORMS

Various verbal formulae and various doctrines without strict formulation form the factual basis of a social system of norms. But there is also something more whose factual existence does not extend beyond the psychological level. It is almost necessary to think of a normative system in actual use as comprehending all possibilities. Legal literature abounds in statements like the following: " . . . it will be seen that the grounds for denying possession and the possessory remedies to servants and agents holding as such—*if, indeed, the latter have not those remedies*—are merely historical . . . ."[9]

Since we cannot, except momentarily by a deliberate effort of analysis, exclude from the concept of a normative system the unknown future decisions of doubtful cases, we must admit that such a concept, as actually present in men's minds and as performing a social function, embraces a fictional element. Every person concerned with the application of such a system must speculate as to what rules not yet authoritatively laid down will be held to apply to situations, real or hypothetical, with which he is concerned. Until a different ruling acquires authoritative sponsorship, he must regard as part of the system of norms his own best inference as to the rule in any doubtful matter.

This fictional element may be denied by two arguments. One, Kelsen's denial that there are any gaps in a legal system, is based upon a sophisticated formalism, far removed from the practical world of either jurisprudence or politics. There is never a political possibility that organs will generally remain inactive whenever no established rule prescribes a sanction for precisely the social event with which they have to deal. In other words, it is impractical to presume that a legal system prescribes liberty whenever it does not in terms prohibit. The plausibility of this view rests solely upon Kelsen's purely formal reduction of all legal rules to parts of uniform three-part hypothetical rules which (1) direct an organ (2) under certain circumstances (3) to apply a sanction. Here Kelsen curiously stays close to the plausibilities of the nineteenth-century *laissez-faire* scene. It should also be noted again that the Kelsenian rule is in essentials purely delegatory. Its second element in the form just given (which actually embraces the bulk of all doubtful questions of law) is hardly more than decorative, since,

[9] Holmes, *op. cit.*, p. 234. Italics added.

as has been indicated, the Kelsenian rule authorizes its own misapplication equally with its application.

The second argument that would deny the presence of a fictional aspect in the concept of law is that of naïve legalism, which sees legal interpretation as a wholly deductive process.[10] In logic, whatever may be deduced from premises was already embodied in the premises. Thus a principle that all men are kind carries the necessary implication that Hitler was kind if we are forced to concede that Hitler was a man. An epistemological misconception that deductive reasoning (in spite of its tautology) affords a sufficient path to the real increase of knowledge lends faith to an actually indeterminate but undoubtedly fruitful process of legal interpretation. The rules of negligence liability, just developing around 1800, may seem in an uncritical view to have been "deduced" from previous authoritative rules on positive and more deliberate torts.[11] In such a development, a new authoritative interpretation (really a new rule) may seem merely to have been logically derived from rules which already existed. The new implication was in this view merely discovered.

Actually, a misconception of the nature of normative interpretation is involved in views which see the interpretation as preëxistent in the rule interpreted. "The life of the law has not been logic."[12] Even in formal logic, given one rule to be interpreted as applied to a given set of facts, at least one other proposition must be deliberately selected to serve as a minor premise before we can derive a specific rule to be compared as the law with the given facts. Thus, given the fact that defendant made a "U-turn" and a legal text prohibiting "left-hand turns," a decision on the legality of defendant's conduct depends upon the deliberate sponsorship by the court of ultimate appeal of one or the other of two propositions: "A U-turn is a left-hand turn" or "A U-turn is not a left-hand turn." Once this selection has been made, but not before, logic may be rigorously followed. All significant legal interpretation, thus, is sub-legislative in character. If a fairly general rule can be made specific by a deductive process from premises which all competent jurists regard as both relevant and authoritative, the matter occupies little space in the

[10] See Julius Stone, "Fallacies of the Logical Form in English Law," pp. 696–735, in *Interpretations of Modern Legal Philosophies*, cited.

[11] See Leon Green, "Illinois Negligence Law, I," *Illinois Law Review*, Vol. 39, p. 36.

[12] Holmes, *op. cit.*, p. 1.

literature of the law. When this is not the case (and the frequency of this contingency alone justifies a professional specialization in law), the ultimately authoritative interpretation will be a discretionary act and will involve a choice among various possibilities for which partial authority could be cited. Until the authoritative interpretation has been given, it cannot be said to exist; but anyone concerned in the matter will see his own prophecy of the decision as part of his concept of the legal system.[13]

VI. THE SOCIAL EFFECTS OF A SYSTEM OF NORMS

The False Question of Logical Determinacy. What has so far been said in analysis of the concept of law would still leave open the possibility that the treatment of legal phenomena in Frank's legal realism is essentially adequate. We could say that it is improper and inexpedient to call either mere decisions or legal professional activity "law" when popular usage understands by the term a certain collection of rules.[14] We have not, however, considered the substantial contention of legal realism that such rules make no difference.

Discussion of the nature of normative systems has been obscured by an assumed dichotomy as to their possible factual effects: either the rules determine the conduct of the organs which apply them or the rules are without contentual significance. This dilemma involves a confusion of the question of the internal logic of a delegatory system of norms with the question of its nature as an objective social phenomenon. Internal logic in such a system, as has been shown, can be obtained only by rendering either its delegatory or its contentual provisions nugatory. Since a system without delegation would have no relevance to actual social phenomena, a concept of such a system without logically determinative contentual provisions may be postulated.[15] Usually, however, this view is pre-

[13] "When there is such a degree of probability as to lead to a reasonable assurance that a given conclusion ought to be and will be embodied in a judgment, we speak of the conclusion as law, though the judgment has not yet been rendered, and though conceivably, when rendered, it may disappoint our expectations." Cardozo, *op. cit.*, p. 33.

[14] Except possibly in the exceptional situation selected by Frank, *i.e.*, when the layman "consults his lawyer." *Op. cit.*, p. 42.

[15] The opposite solution has little phenomenological plausibility. We do sometimes deny the jurisdiction of an organ on the basis of our own view of delegatory norms in the teeth of the organ's own finding of jurisdiction. This is a common mentality of rebellion, which frequently sees itself as mere resistance to usurpation.

sented as one involving factual causality rather than logical determinacy, though deriving much of its plausibility from the logical difficulty alluded to. Such a shift of ground is illegitimate. A system of norms may have social effects that do not take the form of the determination of conduct in strict accord with a single "right" interpretation of its rules.

In Frank's approach to this question, it is denied that the "rules" of law are "authoritative" by an argument in which that term is used as if it meant "determinative." Noting that different decisions may plausibly be argued to conform with a given rule, Frank denies that the rules are "authoritative"[16] or even, by implication, significant. On this ground, he transfers the word "law" from its usual reference so that it applies only to individual decisions.

Logical determinacy, however, is simply not the question we are concerned with when we seek the social effects of a system of norms. Such a system is used, quoted, studied, expounded, and treated with a deference which well justifies our saying that it is authoritative. To determine in what its authoritativeness factually consists, we must make a separate approach independent of the question of the internal logic of the system.

Factual Determinacy: Its Narrow Limits. From the foregoing argument and from the literature referred to, it might be inferred that there is *never* a relationship which might factually be regarded as determinative between a normative text and conduct. Such an assumption would do violence to common experience. The essential feature of a norm regarded as valid within an accepted system of authoritative norms is that it has obligation in the minds of those who accept the system. Whether it determines a given decision or action is a separate question. The attitudinal fact of obligation, however, means that a motive to apply it will frequently exist. Given such a motive, the question of the factual determinacy of the rule can only be the question of whether in a given situation the rule has unambiguous or undisputed meaning.

It is idle to deny that such situations occur, though they are gen-

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Witness the American Revolution and the position of the Southern states in the Civil War. Rarely do we deny authority to a particular decision of an organ of uncontested jurisdiction on the basis of our own view that contentual norms have been misapplied.

[16] *Op. cit.*, p. 277.

erally of little interest to the jurist. The writer is not aware of any ambiguity in the constitutional term of two years prescribed for the House of Representatives. As applied to persons who have received the necessary number of electoral votes, and as applied to all but a few persons alive in any given period, the constitutional requirement that the president be either a natural-born citizen or a citizen in 1789 seems to have been unambiguous. The idea of a jury of twelve reaching a unanimous verdict usually seems clear enough.

The determinacy (or unambiguity) of a rule in the sense here intended is, however, a temporally and materially limited quality. There can be no confidence that the rule will retain that quality in situations which have yet to occur and to which it may seem to have relevance. To the layman, however, much more of law appears unambiguous than to the jurist, and conduct must often be determined by supposed legal requirements which legal talent might readily upset.

Doubt as to the existence of any situations in which law is factually determinative (in the sense that knowledge of a given authoritative rule causally affects conduct) may perhaps be the peculiar outgrowth of the extremely decisionist Anglo-American legal system, particularly of the American variant in which decisionist constitutional law may overrule statutes. The continental "free decisionists" seem to speak in a more normative sense. The American "realist" declares that the decision *is* free. Verbally fixed texts in some situations may be factually determinative in the sense here used. This is likely to be true of situations which the draftsman imagined. It may accidentally be true in situations which he did not foresee. Doctrinal law (particularly of the decisionist rather than the text-book variety) can hardly ever be factually determinative, even in the temporally and materially limited sense here used. Anglo-American doctrinal law consists primarily of the supposed *rationes decidendi* of earlier cases. But the court setting such a precedent has no power to formulate it. The court using the precedent has full power to formulate the earlier *ratio decidendi*, and even in so doing to contradict the express words of the opinion cited as authority.

While in Great Britain the accepted political supremacy of Parliament prevents the equation of this peculiarly elastic doctrinal law with the totality of law itself, it is not surprising that in the United States, where doctrines resting on no more fixed authority than this

ersatz law may overrule the acts of Congress itself, a school has arisen which in effect denies the existence of law altogether and appropriates the word to other uses.

Although it must be granted that the rules of a normative system may occasionally and contingently be factually determinative of conduct, this cannot be regarded as a major social effect of a normative system. Rather, the occasional appearance of unambiguity is mainly important in a secondary sense in lending plausibility to attempted legal regulation of governmental operation, and hence in maintaining the authoritativeness of the normative system.

Delegatory Norms: The Simpler Aspect of Legalism. In prescribing social organization, only the delegatory type of norm is primarily involved. Who is entitled to do what on behalf of the group or in the name of an authority which the group accepts? Simple, deliberate, and temporary or recent organizations clearly show a tendency to merely delegatory rules. By-laws of most clubs or societies, besides very general statements of purpose, are likely to contain little but provisions for the selection, terms, and range of authority of their officers and other agencies. Whatever contentual norms may come to be accepted in older and more complex groupings, there always remains a set of rules which can be analyzed out as the ideological counterpart of its factual organizational structure.

While the delegatory aspect of a normative system, as has earlier been shown, prevails in a rigorous reconstruction of its internal logic, such delegatory rules, in spite of their prevalence, are less important socially than the contentual provisions. Except in the newest and most deliberate social constructions, they may in fact be looked upon as normative translations of factual description. In most situations, the existence of particular organs with their accustomed jurisdictions may be taken as factually given. Only in cases of disputed authority do we become conscious of a normative sense in statements relating to organizational pattern. Rules vesting authority are most readily, if speciously, read as statements of fact. Nor do rules of this sort, because of their usually lesser ambiguity, tend to the same degree as contentual provisions to generate the subtle formalization of argument which, as will be shown, is the most pervasive social effect of a developed legal system and which produces the need for a specialized profession of expounders. The non-specialist usually feels relatively uninhibited in discussing the broader questions of jurisdiction and tenure of office, however much

he may be conscious of being out of his depth in such matters as "due process," "negligence," "reasonable doubt," or "covenants running with the land."

Nevertheless, this aspect of the law, factually as well as logically, cannot be dismissed as nugatory. A delegation remains as the last clear norm confounding the argument of the legal "realist" in many situations in which otherwise it might plausibly be argued that judicial decisions are unrelated to preëxisting rules. A court may enforce a rule of law picked out of thin air, but its claim of authority to act at all will refer to a rule conferring jurisdiction.[17]

Contentual Norms and the Formalization of Responsibility. Although sometimes a rule of law may unambiguously prescribe and motivate conduct, and although delegatory norms may sometimes give rise to formalized argument as to who may do what with authority, the principal effect of an elaborate system of norms arises from the tendency of its contentual provisions to formalize, and to restrict the range of, argument on certain questions of conduct.

The cement of any social organization is responsibility, the practice of giving and expecting explanations of conduct. In some matters, responsibility is tacit. An acceptable explanation for certain conduct in certain situations may be assumed by all involved. One who acts in a responsible situation either acts within such a stereotyped pattern for which an explanation will be tacitly assumed or tends to prepare contemporaneously with his decision or action an explanation that may later require to be expressed. Though an ultimate possibility of sanctions for individual items of socially unacceptable conduct is normally provided by social organization, the explanation expressed or tacitly assumed by the respondees must usually be sufficiently acceptable to avoid the sanction. Otherwise, social life disintegrates into chaotic mistrust, recrimination, and violence, a condition approximated in various degrees in revolutionary situations in which various large groups are no longer able to give mutually acceptable explanations of conduct.

Different social organizations channel the emphasized direction of responsibility in particular situations, but factual responsibility, as above defined, rarely or never becomes unidirectional. Thus the responsibility of child to parent will normally forestall punishment, while the reverse responsibility will normally forestall running away. The mutual responsibility of spouses nor-

[17] Kelsen, *op. cit.*, pp. 150–151.

mally prevents separation. The responsibility of members of a voluntary association to the organization (variously personified) normally prevents expulsion, while the reverse responsibility, if the organization persists, must have succeeded in forestalling the dropping out of members. In the political sphere, just as the subject is responsible in the matter of the legitimacy of his conduct to the state authorities who might impose sanctions, so the régime itself and its individual organs bear a general responsibility to the governed, which normally forestalls mass disobedience or rebellion. Within any bureaucratic or military hierarchy, whatever may be the norm of command-obedience, there is functionally some degree of responsibility of superior to inferior which preserves the necessary morale and cohesion.

Responsibility in action is argument or persuasion. In a given situation, the arguments effectively used must have been selected from among those acceptable to the respondee. As a social phenomenon, an accepted system of norms is a reservoir of forms of argument. Persons accepting the system of norms expect in appropriate situations to hear arguments along the lines of the norms, and expect to accept the cogency of such arguments when they seem relevant to the situation under discussion. Thus legalism, a conventional restriction of forms of argument, arises in any field of action to which many authoritative contentual norms relate. To say that a subject has been closely regulated means that the range of argument with respect to it has been restricted and formalized. Discretion, on the other hand, is ascribed to situations in which the actor is relatively free to select the arguments he will use to justify his conduct.

Authoritative norms, therefore, always restrict the forms of permissible or effective argument, whatever else in fact they may or may not accomplish. When such norms are deliberately adopted, their presumptive purpose is to restrict future conduct. In the sense of rigidly determining the conduct even of the organs which will apply them, we have seen that a result corresponding to the purpose cannot be counted upon with confidence. That a norm will not rigidly determine conduct, however, is not the same as saying that it will not restrict conduct. One who in any sense must answer for his conduct will normally feel able to justify a wider range of conduct strictly on its merits (that is, by whatever plausible

arguments may come to mind) than he will feel able to justify as conforming with the contents of any given authoritative rule or set of rules. There can be little doubt, therefore, that contentual rules generally restrict indirectly the conduct of those who apply them and more indirectly the conduct of those to whom sanctions might be applied under them. The scope and nature of this restriction, however, can never be confidently foreseen in advance of the situation in which it operates. It may well turn out sometimes, given the particular person or persons acting as the organ of authority, that discretion would lead to the same decision as exposition of the established norms. That this should always, or even usually, be the case—the argument of legal realism—has little plausibility.

From the standpoint of those exercising authority, the effect of authoritative norms is, therefore, in varying degrees to restrict conduct by restricting the arguments available in justification of conduct. Naturally, this restriction will vary with circumstances. There is, first, the fundamental uncertainty as to whether what the rule says will turn out to be relatively unambiguous with reference to such situations as happen to occur. Beyond that contingency, there is a strong likelihood that an enactment will be more restrictive than a doctrinal rule which, being readily malleable in restatement, may be made to justify a fairly wide range of conduct. Further, a subordinate rule such as a decision or order, being usually more specific in content, is likely to be more restrictive than the more general rules upon which it was supposedly based. Moreover, a rule purporting to deal only with relatively unusual or exceptional conduct, such as murder, is likely to be more restrictive than one which purports to discriminate among slight variations of normal human conduct, as in the case of negligence.

From the standpoint of those upon whom authority is exercised, authoritative norms offer some assurance against capriciousness in the governors by offering a variety of formulated arguments that can be used in criticism of official action. A certain number of such opportunities for formalistic criticism (falling short of free argument on the merits of the question at issue) seems necessary to maintain the impression of stability in social institutions. It is socially intolerable that all individual questions that may arise should be constantly open to full argument on their merits.

VII. THE LAW OF STATES

A Special Case of a Normative System. The preceding argument has frequently been phrased generally as referring to any established system of authoritative norms. Although our concern has been throughout with such systems of norms as under modern conditions are associated with the powers of coercion of particular states, there seems no reason to regard state law as a different sort of phenomenon from the accepted rules which come to be associated with any social organization. It is true that state law may be reformulated, as by Kelsen, so as uniformly to prescribe the imposition of sanctions of a sort which under modern conditions states tend to monopolize. This, however, is a formal device of statement, and in considering legal questions we usually concern ourselves only with some fragment of Kelsen's hypothetical legal rule. It is not the sanction that is usually argued about, and argument is the major embodiment of the effects of a legal system. Moreover, any organization possesses its sanctions. If under modern conditions the sanctions of organizations other than states happen to be mainly confined to spiritual penalties or exclusion from fellowship (and even this characterization at best is euphemistic with relation to economic organizations), this does not constitute a distinction of quality. It may merely be said that legalism, the phenomenon of a system of norms in social operation as a restriction of argumentation and hence of conduct, is most highly developed nowadays in connection with states.

Historical Contingency Determines What Norms Belong to a State-Sponsored System. It is true, of course, that the total body of norms which may be said to be widely accepted as authoritative within any given society is not nowadays coterminous with the rules having state sanction. The more refined standards of moral responsibility are usually not legally obligatory, and many persons accept religious rules which have no standing in the courts. The distinction, however, is a modern development. In many simpler societies, morals, religious requirements, and law in our modern sense would not have been distinguished as separate systems of norms. The history of different countries has produced the distinction and has drawn the precise lines of demarcation in various ways.

VIII. SUMMARY

When used in a factual sense as denoting an observable social

phenomenon, law refers to a system of authoritative norms associated with a state. Such a system is similar to, but usually more complex than, the normative systems usually associated with other institutions. It consists basically of certain verbally fixed texts and certain doctrines without strict formulation. Such a system is normally thought of as if it were complete in its coverage, inasmuch as each person includes his own inferences as to dubious rules as part of his concept of the legal system. This psychological fact is part of the social phenomenon law, but its content is fictitious, since actual legal systems cannot be elaborated on all necessary points by a rigidly logical process, and authoritative interpretation, therefore, actually adds new rules which had no prior objective existence. Though law, being usually ambiguous in any new situation which arises, does not normally *determine* administrative or judicial conduct, it, nevertheless, normally *restricts* the range of conduct open to those to whom it applies. This restriction operates indirectly by restricting the range of argument by which responsible conduct may be justified, since argument is expected to follow the forms of the legal rules. Thus a system of law in operation is manifested in the formalization of the arguments used in evaluating conduct within legally regulated areas.

ADMINISTRATION OF MILITARY GOVERNMENT IN JAPAN AT THE PREFECTURAL LEVEL

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I

Literature which has accumulated during three years since the surrender of Japan has not yet encompassed a consideration of the administrative process of military government at the local level.[1] That the function of local military government units as the field service of the Supreme Commander for the Allied Powers (SCAP) has been overlooked is to be explained principally by the dramatic character and impressive scope of the functions of MacArthur's headquarters and the resulting eclipse of local activities necessarily of a more prosaic nature. Moreover, in neglecting the local levels of administration, analysts have reflected a prevalent American conception of central-field relationships, a conception which implies that the importance of administrative activity diminishes as it descends from level to level.[2]

The presence of nearly two thousand military government personnel in the 46 prefectures makes evident the inadequacy of a critique of the occupation based solely on the functions of SCAP. It is this group of field service administrators who, living close to the citizenry, have daily contact with native government officials and are in an unparalleled position to impress the Japanese with the quality of American administration. The close relationship which inheres at this level subjects American administration to careful scrutiny and will be of no little importance in judging the final success of the occupation. Poor official performance or disreputable personal conduct is not as easily concealed by small detachments

[1] The term "local level" as used throughout this paper refers to the 46 prefectures, in the capital of each of which is located an American military government team. Although the prefecture is not regarded by the Japanese as being the local level of government, it is the lowest level in the structure in which American units are found. The occupational structure in Japan is not of parallel stratification to the Japanese government. The American structure ascends in hierarchy from the prefectural team through a regional headquarters, a Corps headquarters, and Eighth Army, to SCAP in Tokyo. The Japanese governmental structure descends from the national government in Tokyo directly to the prefectural governments and thence to cities (*shi*) and counties (*gun*). *Gun* are further divided into towns (*machi*) and villages (*mura*).

[2] See Earl Latham, *The Federal Field Service* (1947), 1.

in the field as by large headquarters in metropolitan areas. Neither the headquarters personnel living in large Americanized compounds and working in modern office buildings nor tactical forces isolated in cantonment areas have the same intimate responsibility and contact with Japanese officialdom.[3]

It is now more generally recognized that there is "no field of research in public administration more potentially fruitful, more teeming with valid lessons in the structure, organization, and control of peoples on local, state, national, and world fronts in political, economic, judicial, and social matters"[4] than military government. For the social scientist, the vantage point for study of military government is the prefectural level.

II

The structure of military government units was predicated on the assumption of a tactical invasion of Japan. After the Japanese surrender, military government officers and miscellaneous troops hastily assembled at the Civil Affairs Staging Area (CASA) at the Presidio of Monterey, California, were organized into tactical military government units. These units, planned early in 1945, were of two types. The military government companies[5] were designed to operate at the prefectural level and consisted of 60 enlisted men and 12 officers. The second type was the military government group,[6] similar in strength to the company and designed to

[3] Occupation forces in Japan can be grouped by function into three categories:

(1) The most numerous are tactical troops, who have almost no official contact with the Japanese. Considered the "strong arm of the military government," they are concerned with combat training and occasional patrol duty when called upon by military government. Included in this group are the British Commonwealth Occupation Forces (BCOF) and those sections of headquarters of Eighth Army at Yokohama, I Corps at Kyoto, and IX Corps at Sendai which are concerned primarily with troop relationships.

(2) Military government personnel in the field and the military government staff sections of Eighth Army, I Corps, IX Corps, and the special staff sections of GHQ, SCAP, which deal primarily with Japanese affairs. Large numbers of civilians at both field and headquarters levels are included in this category.

(3) Counter Intelligence Corps units, made up largely of Nisei, located in nearly every prefecture are the investigative arm of military government. Although smallest of the three groups, they have even closer contact with the Japanese than do the military government field units.

[4] Malcolm S. MacLean, "Military Government—Fact and Fancy," *Public Administration Review*, Vol. 7, p. 275 (Autumn, 1947).

[5] Table of Organization and Equipment 20–56T, dated July 22, 1945.

[6] *Ibid.*

operate as regional headquarters with several military government companies as subordinate echelons. The structure of the units reflected anticipation of problems peculiar to recently invaded areas. The chief emphasis was on public safety (the second ranking officer was the public safety officer, the only specialist with an officer assistant) and public utilities. There was no provision for education or procurement personnel. Not only was the composition of these units on a tactical basis, but the training of the officers at the School of Military Government at Charlottesville was essentially in anticipation of invasion; hence emphasis was on logistics. Even the training given at the various Civil Affairs Training Schools (CATS), although of a less military nature, presumed a combat situation.[7] The landing in Japan of military government units in full combat equipment, anachronistic though it may seem, was at least consistent with previous conditioning.

In September, 1945, the military government plans prepared by MacArthur's headquarters contemplated the assignment of nine military government groups and thirty-three companies to the Sixth Army area in southern Japan and six military government groups and eighteen companies to the Eighth Army area in central and northern Japan. This would have made possible the assignment of at least one company to each prefecture. The plan was never executed, for most of the military government companies and groups were diverted to Korea. The few units which did arrive in Japan in November, 1945, were augmented by civil affairs units which had operated in the Philippines,[8] but were reorganized and redesignated as military government companies for operation in Japan.

The military government companies and groups thus organized inadequately met the needs of the actual situation. Enlisted

[7] For an evaluation of the courses of the Civil Affairs Training Schools, see Harold Zink, "The Contribution of Universities to Military Government," *American Association of University Professors Bulletin*, Vol. 32, pp. 687–695 (Winter 1946). For a detailed description of the courses and an account of the planning for and organization of the training program, see Charles S. Hyneman, "Wartime Area and Language Courses," *ibid.*, Vol. 31, pp. 434–7 (Autumn, 1945). A general description of the training of officers for Japan can be found in an account by Carl J. Friedrich and Douglas G. Haring, "Military Government for Japan," *Far Eastern Survey*, Vol. 14, pp. 37–40 (Feb. 14, 1945).

[8] These civil affairs teams were known as Philippines Civil Affairs Units (PCAU), and initially had an entirely different structure from the units organized for Japan.

strength was found far in excess of requirements, and officer positions were so categorized as to put emphasis on unimportant activities and entirely neglect important functions. No official change in structure was effected until July 1, 1946, fully ten months after the surrender of September 1, 1945. Moreover, the standardized structure of the units did not permit of modification to meet the disuniformity which characterized the needs of the prefectures, all of which varied in size, location, population, degree of industrialization, and other aspects. Yamanashi, a relatively unimportant prefecture with no special problems and 839,000 people, was assigned the same sized unit as that which administered Tokyo, with three and one-half million people and more complex problems than any other area in Japan.[9]

The withdrawal of the Sixth Army from Japan necessitated a shift in the assignments of military government companies. This, in turn, resulted in the assignment of two or more prefectures to one company. The Tokyo unit, which needed a strength of several hundred, was increased in staff to 90 and was given additional jurisdiction over Yamanashi. At the other extreme, the 76th Military Government Company, with a staff of 72, administered Shimane and Tottori, two relatively unimportant prefectures with a combined population of 1,424,000.

A decision to release trained military government officers from the "scarce" category and to redeploy them under the same criteria used for tactical officers resulted in the release of more than 80 per cent of the trained military government officers in the field by June, 1946. In anticipation of this sudden exodus, and reflecting an awareness of the inadequacy of existing field organization, plans were made in April to effect a significant reorganization. Accordingly, local unit commanders were called upon to submit organization charts suited to the problems of the prefectures to which they were assigned. This change in the structure of military government units was made effective on July 1, 1946.[10] The reorganization was

[9] The unit assigned to administer Tokyo was a reorganized Philippines unit redesignated as the 32nd Military Government Company. Although slight modifications in strength were made (such as the attachment of officers to assist in liquidating the Bank of Japan), its organization was not much different from that of other companies.

[10] Headquarters, Eighth Army, Letter Order 6–44 (Reorganization of Military Government in Japan), August 7, 1946. Although this T/O & E was not published until August 7, the reorganization had been tentatively effected on July 1.

based on an accommodation of administrative form to the disparate needs of the administrative areas.

Under the August 7, 1946, plan of structure, prefectures were classified according to their special problems as minor, intermediate, or major. Each type was assigned to the jurisdiction of a military government unit designed for that particular class of prefecture. Elements taken into consideration in establishing this classification were at least four: (1) The concentration of occupation troops in the prefecture was considered, since it would greatly affect the nature of military government work. The presence of a large cantonment area such as a divisional headquarters usually resulted in a higher incidence of criminal offenses by Japanese against troops (usually thefts), heavy demand for Japanese labor and services, problems of traffic control, maintenance of highways as supply arteries, procurement of supplies from the Japanese, allocation of Japanese buildings for housing of dependents, and numerous other problems that result from extending the area of contact between Japanese and American troops. (2) The intensity and type of industrialization of the prefecture were important. Industries which had been designated as reparations plants were in custody of military government officials and necessitated an impressive amount of administrative activity as well as constant field inspection and surveillance. (3) A third element considered was the special problems of certain areas. Nagasaki was a debarkation point for repatriates and demobilized servicemen, and as such posed special problems of public safety, public health, and housing. Areas such as Aomori, Niigata, or Shimonoseki, because of harbor facilities, created special problems in fishing, shipping, and public safety. (4) The fourth element was the usual considerations of size, location, terrain, communications, population, number of urban centers, self-sufficiency of food supply, extent of bomb destruction, and extent of repatriation of populace.

Application of these four principles entering into the structure of the administrative mechanism resulted in the following basic pattern. Thirteen prefectures were designated as "minor," and each was assigned to the jurisdiction of a minor military government team.[11] The designation "company" was changed to "team," the numbered designation was dropped, and the team assumed the

[11] Yamanashi, Ishikowa, Fukui, Shiga, Nara, Wakayama, Tottori, Shimane, Kagawa, Tokushima, Kochi, Miyazaki, and Saga.

name of the prefecture. Each minor military government team had an authorized staff of six officers and 25 enlisted men. The senior military government officer (SMGO) was authorized to have the rank of lieutenant-colonel. The remaining five officers were assigned the following staff functions: natural resources, commerce, and industry; education; procurement; public health; adjutant.

Eighteen prefectures were designated as intermediate.[12] Each was authorized to have a staff of eight officers and 32 enlisted men, the two additional officers being an executive and a legal-government officer. The usual rank of the SMGO was lieutenant-colonel, though not more than four teams were authorized to have the grade of full colonel.

The "major" prefectures were 12 in number, with an authorized strength of ten officers and 37 enlisted men.[13] The difference between this number and the strength of the intermediate teams is accounted for by the addition of one more officer for natural resources, commerce, and industry, and an administrative officer.

Osaka was placed in a special category (this paralleled Japanese practice), and was assigned a field unit designated as the Osaka-fu Military Government Team. The staff of this team consisted of 16 officers and 42 enlisted men and included four officers in the natural resources, commerce, and industry section, two education officers, one money and banking officer, one public welfare officer, and two procurement officers.

The problems peculiar to the metropolitan area of Tokyo and Yokohama were recognized by the activation of a unit designated as the Tokyo-Kanagawa Military Government District.[14] This district was authorized to have a staff of 65 officers and 150 enlisted men. Officer personnel was distributed in the following staff functions: two senior military government officers; two executives; 16 natural resources, commerce, and industry officers; two legal and government; six education; eight money and banking; three public health; two public welfare; 16 procurement officers; two adjutants; and six administrative officers. The District was further divided

[12] Akita, Iwate, Toyama, Gifu, Fukushima, Niigata, Tochigi, Ibaraki, Chiba, Saitama, Nagano, Mie, Okayama, Yamaguchi, Ehime, Kumamoto, Oita, and Kagashima.

[13] Hokkaido, Aomori, Miyagi, Yamagata, Gumma, Aichi, Shizuoka, Kyoto, Hyogo, Hiroshima, Fukuoka, and Nagasaki.

[14] Kanagawa is the name of the prefecture of which Yokohama is the capital city.

into two detachments, one for Tokyo and the other located in Yokohama, to administer the prefecture of Kanagawa. It was for this functional division that two SMGO's (each in the grade of colonel) and two executives were authorized.

In addition to the field units described above, eight regional headquarters were created. These headquarters had no jurisdiction over the Japanese, but functioned as administrative control echelons over groups of teams. In assigning boundaries to these regions, the old boundaries of the abolished Japanese superintendencies were used.[15] Regions were assigned a staff of 11 officers and 30 enlisted men.[16] In addition to a colonel in command, there were an executive, three natural resources, commerce, and industry officers, one legal and government officer, two education officers, one money and banking officer, one public health officer, and one adjutant.

In any of the teams, regional and in the district, all officer positions except those of commander, executive, adjutant, and administrative officers, could be filled by civilian employees of appropriate CAF rating. Similarly, all enlisted positions except those of first sergeant, mess, communications, supply, and transportation personnel could be filled by civilian employees. By the end of 1947, many of these positions were filled by men and women civilian employees.

The reorganization of August 7 gave evidence that at least some attention had been given to the need for relating the military government units to the peculiar needs of the prefectures. The chief weakness of the pattern thus evolved was the failure to individualize the structure sufficiently. At the prefectural level, there was a variety of only five standard units. But the needs of the prefectures varied so greatly that each military government team should have been "personalized" to the prefecture, thus making 46 different units. This would have closely approximated Japanese

[15] The eight superintendencies-general were created by the Imperial Government (now designated as the National Government) in January, 1943, and abolished in November, 1945. For further discussion, see Ralph J. D. Braibanti, "Neighborhood Associations in Japan and Their Democratic Potentialities," *Far Eastern Quarterly*, Vol. 7 (Feb., 1948), p. 136, note 3.

[16] Military government regions are designated as Hokkaido, Tohoku, Kanto, Tokai-Hokuriku, Kinki, Chugoku, Shikoku, and Kyushu. See Lt. Col. Henry L. Hille, "Eighth Army's Rôle in the Military Government of Japan," *Military Review*, Vol. 27 (Feb., 1948), pp. 9–18, for a general description of field units as of July 1, 1947. Two useful organizational charts are included in this article.

governmental structure, which allows a different organization for each prefecture.

A modification of the administrative structure was effected on December 11, 1946.[17] Saitama was changed from an intermediate to a major prefecture; Shizuoka was changed from a major to an intermediate prefecture; Yamanashi and Ishikawa were changed from minor to intermediate status. This shifted the categories somewhat; there existed as a result 11 minor teams, 20 intermediate teams, and 12 major teams. There was a slight reduction of officer staff and an increase in authorized enlisted staff. Strength of the minor teams was reduced to five officers, but enlisted strength was raised to 26. Officer staff of the intermediate teams was reduced to seven; enlisted staff was raised to 23. Officer staff of the major teams was reduced to eight, but enlisted staff was increased to 39. The structure of the special Osaka-fu Military Government Team was more drastically changed by reducing officer staff from 65 to 45 and enlisted staff from 150 to 125. The most complete change was in the regional headquarters units. In lieu of the standard type unit for the eight regions, a greater variety of structural possibilities was introduced. Chugoku region was assigned a special regional team of 10 officers and 33 enlisted men; Kinki region was given 18 officers and 41 enlisted men; Tohoku region, 13 officer staff and 36 enlisted staff. The remaining five regions were reduced in staff from 11 to seven officers and from 41 to 30 enlisted men. As a result of the December 11, 1946, modification, a total of 422 officer staff and 1,466 enlisted staff (aggregate of 1,888) was authorized for the administration of military government—a decrease of 400 personnel from the structure instituted in the previous August. A minor modification effective July 1, 1947, specifically allotted civil service personnel to the field units, whereas previously civilians were substituted for certain officer and enlisted positions. Under the July 1 modification, the bulk allotment consisted of 398 officers, 1,436 enlisted men, and 605 civilians (aggregate, 2,439). Civil service personnel hold positions of varying degrees of responsibility ranging (in the prefectures) from public welfare officer to clerk-typist.

A new administrative structure has no traditions to operate under, and as a consequence organization is of the utmost impor-

[17] Headquarters, Eighth Army, Letter Order No. 12–18 (Reorganization of Military Government in Japan), Dec. 11, 1946.

tance. That military government organization underwent only one major structural change in two years is not *per se* a valid criticism. Change of itself is of no particular importance in evaluating improvement. In Japan, the situation administered hardly permits an alien military system to know in advance all the significant responses and inadequacies in policy. In civil administration of presumed democratic foundations, there inheres an ability to accommodate to needs as they arise. In military organization, structure is somewhat more unyielding. Adherence to authorized structure, rather than discretionary improvisation and modification to meet changing needs, is the behavior which merits reward. Hence in the military organization, structure and adherence to structure assume virtue and sanctity of unreasonable proportion.

III

The key policy of the total administrative process of the occupation is the concept that the Supreme Commander for the Allied Powers exercises his authority *through* the Japanese governmental machinery and agencies, including the emperor to the extent that this arrangement satisfactorily furthers the policy of the Allied Powers.[18] It is this policy which results in the fundamentally different character of the occupation of Japan from that of Germany and Korea.[19]

The normal expectancy has been and is that the Japanese government should be permitted to exercise normal powers of government

[18] This policy was first expressed in a message transmitted to General MacArthur by the Combined Chiefs of Staff on September 6, 1945, and again in a Far Eastern Policy Decision of June 19, 1947. These documents are accessible, respectively, in State Department Publication 267, Far Eastern Series 17, *Occupation of Japan—Policy and Progress*, p. 73, and *Activities of the Far Eastern Commission*, Feb. 26, 1946–July 10, 1947 (1947), p. 49.

[19] A less well known but equally important concept of occupation policy is the provision that "the Supreme Commander is not committed to support the Emperor or any other Japanese governmental authority. The policy is to use the existing form of government in Japan and not to support it." (Part II, par. 2, *Basic Past-Surrender Policy for Japan*, FEC Policy decision, June 19, 1947). But the boundary line between "using" and "supporting" does not admit of easy delineation. The political naïveté of most military government administrators and their lack of experience in positions of governmental authority tend to make them stand in awe of prefectural officials or officials of the national ministries. Hence such anachronisms have occurred as a group of officers saluting the Emperor when he arrived in their prefecture. Military government officers in the field tend to become so allied with the government that in subtle and unintentional ways they lend support to the status quo against changes initiated by liberal elements or even by SCAP.

in *domestic* administration. However, the Supreme Commander reserves the right to exercise direct control without using existing governmental agencies. Thus far, that reserve power has not been used. It exists, together with the combat troops, as a potential sanction in the event of non-compliance by the Japanese.

This single policy more than any other establishes the pattern of administration which may be characterized at the SCAP level by what L. Urwick calls "administrative superintendence"[20] and at the local level by surveillance. This implies the function of some level of supervision rather than operation. The fact that the occupation of Japan is administered by a staff of fewer than 2,000 in the field is directly attributable to adoption of supervisory rather than operational control.

The control mechanisms of SCAP *vis-à-vis* the Japanese national government can be grouped in four categories. The first category, and one which is not discussed at length in this paper but is mentioned only for completeness, embraces the judicial devices instituted for the trial of war criminals.[21] A second aspect of SCAP activity is the preparation and issue of negative mandatory directives in the nature of injunctions or prohibitions. A third aspect is the preparation and issue of positive mandatory directives of a constructive nature. The fourth function embraces those activities of SCAP officials which result in the non-mandatory advice given in either formal or informal circumstances. All the administrative activities of SCAP as related to the Imperial Government can be classed under one of these categories. The second classification includes directives which ordered the demilitarization of Japan, collection of swords and firearms, abrogation of certain laws, dissolution of certain organizations, apprehension of suspected war criminals, abolition of licensed prostitution, curtailment of certain courses in schools, and abolition of state sponsorship of Shinto. In the third category can be placed such constructive measures as revision of the election laws, extension of the franchise to women, the constitution of 1946, reform in local government, rehabilitation of bombed areas, and nationalization of coal mines. The distin-

[20] L. Urwick, *The Elements of Administration* (1943), p. 66. This term is more appropriate for SCAP activities because it implies "instructions as to policy and occasional discussion as to means and methods." This is not the same type of activity performed at the local levels.

[21] These judicial devices include the International Military Tribunal of the Far East, as well as subordinate military commissions and provost courts.

guishing feature of this type of activity is its creative rather than destructive nature. Most of this activity is effected by enactment of statutory law by the National Diet under the aegis of SCAP. A common characteristic of activities of both the second and third types is the mandatory nature of the directives. In no case are the Japanese allowed to exercise discretion as to choice in carrying out or disregarding the directive. Although there exists varying discretion as to means of execution, execution is mandatory. In the fourth category can be grouped an impressive array of behaviors ranging from official, formal advice to unofficial and informal consultation.[22] The United States Education Mission to Japan is an example of the most formal type of consultative behavior. After careful study, the Mission prepared recommendations for reform of the school system and submitted them to SCAP. SCAP transmitted them to the national government as non-mandatory suggestions. The Japanese were under no compulsion to accept suggestions thus made, and, in fact, have disregarded many of the proposals advanced, including the proposal to adopt Romaji as the official form of writing.[23] Suggestions given unofficially by a subordinate SCAP official to a subordinate Japanese official would be typical of the other extreme of this advice-giving, consultative function.

As the occupation matures, the dominant focus of activity shifts from the first two types to the third and fourth types. This shift is the hall-mark of success in the occupation, if success be judged by the emanation of desired reform activities from Japanese initiative.

In so far as SCAP is concerned, military government teams operating in the field are legally non-existent. The responsibility for the conduct of the occupation of Japan is delegated to the Eighth Army. This includes the responsibility for administering military government at the local levels. Consequently, all military government teams, regions, and the Tokyo-Kanagawa military govern-

[22] Of these behaviors, one writer states; "In practice, most of the important decisions relating to the governing of Japan . . . have been greatly influenced by a large number of American experts on the staff of the . . . SCAP . . . . Since these advisers come in direct and almost daily contact with Japanese agencies, their opinions and advice serve as a strong stimulant for the Americanization of objectives, techniques, and organizational patterns." See Thomas L. Blakemore, "Postwar Developments in Japanese Law," *Wisconsin Law Review* (July, 1947), pp. 633–4.

[23] For further discussion of this problem, see Velma H. Cassidy, "The Program for Reëducation in Japan—A Survey of Policy," *Documents and State Papers*, Vol. 5 (Apr., 1948), p. 29.

ment district are assigned to the Eighth Army. Army headquarters in Yokohama has a military government section concerned with the administration of local units. Although Japan proper is administered by the Eighth Army, the nation is further divided into two Corps. I Corps in Kyoto is responsible for 20 prefectures in southern Japan constituting the Kinki, Tokai-Hokuriku, and Kyushu regions. IX Corps at Sendai is responsible for the 15 prefectures which make up the Tohoku, Hokkaido, and Kanto regions. The Eighth Army is directly responsible for the 11 prefectures which comprise the Shikoku and Chugoku regions and the Tokyo and Yokohama area. Each corps has a military government staff section similar in organization to that of the Eighth Army. The administrative link between the Corps headquarters and the prefectural teams is the military government region, a separate unit, not connected with any tactical organization. (The Eighth Army and both Corps have a tactical responsibility; military government is simply one staff activity.) These five echelons from SCAP to prefectural military government teams constitute the command channels of military government as they presently exist. It should be noted that divisions, regiments, and battalions (all purely tactical organizations) have no participation in military government activities. Of the five echelons in the system, the only level staffed with personnel who are functional specialists with a high degree of expertise is the SCAP level. Although originally the local teams were staffed with trained specialists, these have long since departed and have been replaced by combat officers. With some notable exceptions (such as public health officers), the other echelons are staffed almost completely with combat officers performing important specialist functions. The various special staff sections of SCAP, if not headed by functional specialists, at least are so otherwise staffed as to provide a high level of competency.

The relations of these five layers of administration reveal a standard Army pattern of line command which is characterized by vertical organization. All policy emanates from SCAP. All contact with the Imperial Government is made at the SCAP level. Army, Corps and regional levels have no contact, officially, with any echelon of Japanese government. The team level has contact with the prefectural government to which it is assigned. The hypothesis has been advanced that vertical organization is a phase of field organization growth, and that it becomes less satisfactory as an

organizational pattern as the program moves from "formlessness to form" and from "discontinuity to continuity."[24] It is significant to note that the vertical organization of the occupation remains essentially the same as it was in 1945, with the exception that there has been a steady movement of discretionary power from the SCAP level to the military government section of the Eighth Army. The extent to which the decision-making responsibility can descend in the hierarchy is limited by the absence of expertise at any level below SCAP and by a basic concept of occupation policy which necessarily limits the authority of local military government units.

SCAP transmits its instructions to the Imperial Government by means of a series of directives commonly referred to as "SCAPINS" or as "SCAP directives." The official designation is "Memorandum for the Imperial Japanese Government."[25] Copies of the directive are sent to each of the four lower echelons of military government through regular military channels. The Eighth Army determines from the directive the character of the action to be taken by local military government units. After such determination, an Eighth Army "operational directive" is prepared and addressed to Corps. This directive can be classed as an *ancillary directive of parallel scope*. It may repeat entirely the SCAPIN concerned, may have a copy of the SCAPIN attached, or may include a reference to it. The operational directive is usually more specific in character than the SCAPIN and directs local military government units to exercise "surveillance and report instances of non-compliance to this headquarters." Moreover, the operational directive may direct military government teams to make periodic inspections and submit specified reports. It is important to note that the SCAPIN usually makes no reference to local military government units, and that the Eighth Army operational directive is the first directive which provides a legal basis for action by the local military government units. The range of administrative discretion delegated to the Eighth Army is rather wide, but it is procedural rather than substantive. For example, the Eighth Army made a decision to require each military government team to submit detailed re-

[24] Latham, *op. cit.*, p. 5.

[25] For detailed discussion of a typical SCAPIN (in this case SCAPIN 550, the famous purge directive), see Harold S. Quigley, "The Great Purge in Japan," *Pacific Affairs*, Vol. 20, pp. 299–308 (Sept., 1947).

ports on inspections of at least five Japanese schools a month.[26] This action was taken on the basis of a SCAPIN which made no mention of school inspections or action of any kind by military government teams.[27]

The Eighth Army operational directive is sent to Corps headquarters, where another ancillary directive is prepared, usually repeating the operational directive and making no changes in it substantively except to advance the deadline date on reports. The Corps directive is known as an "operational memorandum." The fact that the Corps assumes no authority for changing the Army order in any way, except as mentioned above, limits the value of Corps as an echelon in the chain of command. A Corps operational memorandum is transmitted to the various Military Government Regional Headquarters, whose sole function is to transmit the directive to the teams in its area. Regional headquarters has no discretionary power and prepares no directives or memoranda of its own.

IV

The range of possible administrative behavior which the prefectural team has at its disposal after receipt of an Eighth Army operational directive, Corps operational memorandum, and SCAPIN can be grouped into four classes. Two of the actions are mutually dependent and are best discussed together. They are *surveillance* and *reporting of non-compliant behavior*. Surveillance connotes supervision or oversight, but includes no element of summary correction. The authorized administrative behavior of the prefectural teams is thus limited in scope. Instances of non-compliance are reported through channels until the report reaches SCAP. In the interim, prefectural teams take no corrective action. The report is not acted upon in any of the subordinate levels below SCAP, yet since it is necessary for the report to pass through all layers, it is delayed considerably. By the time action is taken by SCAP, an embarrassingly long period has elapsed. This procedure is necessary, however, in view of the basic policy of using the existing agencies of government. The non-compliant behavior, when re-

[26] Headquarters, Eighth Army, Operational Directive No. 19, *Inspection of Japanese Educational Institutions*, Feb. 13, 1946.

[27] SCAP Memorandum AG 350 CIE, *Administration of the Educational System of Japan*, Oct. 22, 1945.

ceived by SCAP, is referred to the appropriate agency of the national government, in which agency the responsibility for corrective action lies. The national government orders the corrective action taken through regular Japanese channels. In this principle of using the Japanese government to take corrective action in the instance of non-compliance behaviors lies the genius of the organization of the military government of Japan.

The effective application of this theory is limited, however, by poor communications facilities and by the retention of two administrative layers (regions and corps) which serve no effective purpose except to delay and confuse. In practice, the tendency of administrators in the field is to be impatient of delayed action by SCAP on reports of non-compliance. Hence the administrator undertakes corrective action himself by issuing a direct order to the prefectural official. This unauthorized assumption of discretionary power to correct non-compliant behavior in the field is in fact the central problem of military government administration. The local military government officer, frustrated by a decision-making headquarters seemingly unresponsive, or at least sluggish, in response to his needs, desirous of impressing the Japanese with the promptness of American action, is thus impelled to act in a personal capacity. The prestige of the American army is such that the order thus given is promptly obeyed. The American administrator, flattered by the immediate aquiescence, relies less and less on the authorized procedure of reporting non-compliance to headquarters and is encouraged by seeming success to depend more and more on the efficacy of his own summary action. A common attitude among field administrators is pride in the fact that they report as little as possible to headquarters and solve their own problems.

Such practice merits careful consideration on at least three counts. First, the failure to report instances of non-compliance to SCAP results in an inaccurate and optimistic report as to the achievements of the occupation. SCAP reports are necessarily compilations of reports received from the 46 local units or from field studies made by SCAP representatives, who rely, however, largely on information obtained from the field units. It is this factor more than any other which has distorted the impressions of the occupation released by SCAP. A few analysts, familiar with the Japanese scene, and working from independent Japanese sources in the field, have noted the distortion, although they have not explained the relation-

ship between the distortion and the administrative process. Secondly, the correction of non-compliant behavior by summary action in the field results in a pattern of enforcement technique as varied as the individuals taking the enforcement action. There exists no uniform piety that is assumed by the total organization. The actions may or may not be in consonance with standards or policies of SCAP, and would eventuate in a pattern of justice essentially disparate and based on ministerial caprice. This is particularly true when the administrator in the field lacks good judgment, competency, or understanding of occupation policy. The third and most imminent danger in such exercise of discretionary power lies in its effect to undermine and negate the very philosophy on which the occupation is conducted, namely, increased reliance on Japanese agencies of government. The Japanese citizenry has become increasingly disdainful of its government. The government, especially the police, whose power has been greatly curtailed, has become the scapegoat for domestic troubles and an object of scorn and ridicule. The individual Japanese have looked more and more to the American military government for leadership. Japanese officialdom, unable to compel compliance, has leaned increasingly on the power and prestige of American agencies. This has tended to make Japanese prefectural government less independent, less self-confident, and less effective. The subtle transfer in responsibility has in turn burdened the military government with a scope of duties quite beyond the competence of its staff and of the intent of its organizational structure.

In no area of administration has this been more dramatically demonstrated than in the collection of rice. The figures of the Ministry of Agriculture show that 90.7 per cent of the national program of rice collection was accomplished by January 31, 1948.[28] At this same time in 1947, only 73 per cent of the rice collections were made, and the campaign never reached a successful termination. In 1946 and 1947, farmers defied their government and refused to turn in a full quota of rice. This year, local military government teams intervened. American military government officials accompanied Japanese collectors into the farm villages and backed up Japanese threats of punishment. The rice collection was successful.

[28] *New York Times*, Feb. 15, 1948, 10:1. A further description of the general apathy increasingly displayed by the Japanese toward their government can be found in *ibid.*, Apr. 11, 1948, 22:1.

But the implications for long-range military government policy are ominous. Such participation on the part of military government results in gradual supersession of Japanese activities by American officialdom.

Herein lies a delicate balance in the administrative process which must be preserved if the basic concept of the occupation is to be effectively applied. Impressed by the success of immediate results in depriving Japanese government of the responsibility we have theoretically assigned it, we have rendered the Japanese less capable of self-government. Self-reliance, initiative, and responsibility for action are modes of behavior which quite properly should be encouraged in the Japanese government. Success in the occupation can be judged by less American intervention rather than more. To accomplish this, local military government teams have been carefully limited in the scope of their activities to the actions of surveillance and reporting of non-compliant behavior. This pattern of administrative behavior has been rendered impractical by a sluggishness, a certain unresponsiveness, in the corrective process prescribed.

V

The administrative process of the occupation assumes its character chiefly from the doctrine of using the indigenous government to carry into effect policy promulgated by SCAP. The fact that effective application of that doctrine at the field office level is impaired by ill-conceived channels of command raises for consideration the advantages or disadvantages of retaining the corps and regional layers of administration between the field units and the responsible headquarters.

While it remains true that functional expertise is generally nonexistent at corps and regional levels, it follows that so long as such lack obtains, delegation of broadened administrative discretion to those levels might be unwise. It is interesting to conjecture why these echelons have persisted as elements in military government organization. One reason may be the reluctance of military authority to divorce military government too completely from tactical control; hence the projection of corps in the scheme. A second reason might be military organizational staticism which tends to reject drastic change in favor of a compromise solution which would effect little fundamental modification. Regional military govern-

ment groups have been an element in organizational thought long enough to make elimination of them so much the more difficult. They probably originated from the initial plan to set up an organization paralleling as closely as possible the Japanese government. Since Japan had eight administrative regions (superintendencies-general) from January, 1943, to November, 1945, it was reasonable that the military government structure follow the regional plan. Even though the Japanese abandoned the temporary wartime regional organization, regions persisted in the American scheme. The Japanese have long been able to control effectively the 46 (formerly 47 with Okinawa) prefectural governments with no intermediate echelon. The division of Japan into eight regions exists neither geographically nor politically, nor as an element of Japanese organizational thought. So long as the military government regional units exercise no discretionary authority, their continued existence serves only as an impediment in the chain of command. A defense of the regional levels might be made on the basis that they are potentially convenient agencies for coördination of activities of the military government teams—such coördination being designed to result in uniformity of administration. But the coördinating function has been more effectively performed by Corps level, and still more effectively by Army and SCAP.

The Corps participation in military government has little reasonable justification. Corps possesses extremely limited discretionary authority—never authority in substantive matters and rarely in procedural determinations. Although it can, because of the area it embraces, perform a service as an echelon of coördination, its success is limited by the limitations of its authority. Both Army and SCAP have held coördination conferences completely ignoring and by-passing the Corps and regional levels.[29]

An approach to a solution might be the elimination of Corps as

[29] The Eighth Army, for example, has held eminently successful conferences on problems and procedures of procurement for the 46 procurement officers of the military government teams. SCAP has held many similar conferences, including one for all natural resources and commerce and industry officers from local teams on the administration of the Rural Land Reform Act. Early in 1947, SCAP held a conference with representatives of each of the 46 military government teams to standardize procedures for the administration of the purge of government officials. Both Corps I and Corps IX have held conferences on education and public health, but SCAP functional specialists in each case were present to explain policies which only SCAP has authority to formulate.

a unit with military government responsibility and the dissolution of military government regional teams. This would simplify the chain of command by making the prefectural teams directly responsible to the Eighth Army. Increase of staff in the Eighth Army military government section would permit of closer supervision of local teams and rotation of personnel between Army headquarters and field units. Rotation would reduce the dangers inherent in the retention of personnel in the same area for an extended period of time.

The third major function of military government in the field is the rendering of informal, non-mandatory advice and assistance to Japanese prefectural governments. Sanction for this function can nowhere be found in official policy directives. The rendering of any advice by local military authorities, the interpretation of SCAP directives, or the transmission of orders of local origin to the prefectural government, have been emphatically proscribed. This proscription was first mentioned in a directive of September 18, 1945: "Except in emergencies, direct orders to Japanese governmental officials will not be given by field commanders . . . unless specifically ordered to do so by the Supreme Commander for the Allied Powers." This policy was again mentioned in an Eighth Army communication which stated: "Par. 3. The necessity for subordinate occupation force commanders . . . issuing administrative instructions to implement further the operational directives of this headquarters or SCAP directives will be infrequent and confined to emergencies."[30] Even in such emergency situations, wherein administrative instructions were permitted, the strength and effect of the orders were minimized by the provision that "no administrative instructions which may be issued by occupation force commanders as provided in paragraph 3 above will provide any penalty for violation thereof."[31] The capacity of the local military government teams to issue orders to Japanese authorities can be effectively curtailed. In some instances, especially in matters of procurement of Japanese supplies and services, SCAP has directed the Japanese prefectural governments to disobey local orders issued by prefectural military government officials, since such orders are illegal. The Japanese government was further directed to report all in-

[30] Headquarters, Eighth Army, *Operational Directive Number 29/2*, Aug. 17, 1946, par. 3.

[31] *Idem.*

stances of issue of such orders promptly to SCAP. This is a curious reversal of reasonable behavior in which SCAP uses the Japanese government (technically an enemy government) as a means of controlling a subordinate American echelon. Intriguing as this practice may be for further discussion, such consideration would not be germane to this paper. It is sufficient to indicate that local units can be and have been effectively controlled in this matter.

The power inherent in the conqueror-vanquished relationship which results in the informal asking for advice and the non-official giving of advice cannot, by its very subtlety, be effectively controlled. It is in this behavior that the military government units exercise great influence despite the restrictions otherwise imposed by SCAP. In the exercise of this function, the possibility of caprice of decision, disparity in standards, and incongruity in methods need not be greatly feared. The universals of human behavior constitute an effective mechanism of control. A military government unit which by reputable conduct and efficient operation has won the respect and genuine admiration of the prefectural government (as indeed some have and many have not) will often be called upon for advice in matters of government. Any advice given is, of course, unofficial, and that fact is perhaps better known and understood by Japanese officialdom than by military government personnel. The ability of Japanese officials to judge quality of advice, the fact that only those who merit the distinction are usually asked for advice, and the freedom of the Japanese to reject the advice, are factors which mitigate in effectively controlling this manifestation of governance.

The fourth major function of military government at the prefectural level is a limited responsibility in the conduct of judicial proceedings for the trial of offenses committed by Japanese nationals. That responsibility is restricted to the prosecution of offenders. The establishment of provost courts was first authorized by SCAP in February, 1946.[32] The authority to establish and control provost courts was delegated to the Eighth Army, which published, on March 11, 1946, an operational directive in which detailed procedures for the operation of courts were established.[33] Initially, responsibility was further delegated to Corps and by Corps

[32] GHQ, SCAP, *Establishment of Military Occupation Courts*, Feb. 19, 1946.

[33] Headquarters, Eighth Army, *Operational Directive No. 29, Establishment of Military Occupation Provost Courts*, Mar. 11, 1946.

to tactical divisions. This was a curious arrangement, for tactical divisions had no other military government responsibilities. Under it, division commanders authorized local senior military government officers to sit as provost courts in their respective areas. This combined the judicial and prosecuting functions, since the SMGO or one of his staff usually preferred charges and prosecuted the case. After a short period of unsatisfactory operation, this arrangement was changed by the appointment of a tactical officer who acted as a circuit court for several prefectures. This procedure was even less satisfactory. In October, 1946, tactical divisions in IX Corps were relieved of provost court participation, and IX Corps established a circuit court to hear all cases in its jurisdiction.[34] This procedure prescribed that charges be preferred by one officer, that a second officer prosecute, and that defense counsel be provided at no expense to the accused.

Provost courts had jurisdiction over criminal offenses by the Japanese of the following nature: acts prejudicial to the security of the occupation forces or any member thereof, or any person attached to or accompanying such forces; unauthorized possession, taking, receipt, or disposal of property of the occupation forces or any member thereof or any person attached to or accompanying such forces; interfering with, refusing information required by making false or misleading statements orally or in writing to, or defrauding in any manner any member of the occupation forces in a matter of official concern; acts on behalf of or in support of any organization dissolved or declared illegal by the Supreme Commander for the Allied Powers or dissolved or declared illegal at his order. Provost courts were authorized to impose fines not to exceed 75,000 yen, imprisonment at hard labor for five years, or both. The provost court system thus established, measured in terms of American army court-martial standards, appeared satisfactory. Excluding the Tokyo-Yokohama area (where several provost courts were held, some of them night courts to dispose of cases immediately), there were only the two circuit courts—one in each Corps. This factor tended to standardize justice throughout Japan. Judicial review was vested in Corps headquarters, where each court decision was acted upon by the Corps staff judge advocate. The only participation by local units was the privilege of preferring

[34] Headquarters, Corps IX, *Operational Memorandum No. 43/2, Provost Courts*, Oct. 19, 1946.

charges and providing an officer for the prosecution. In the operation of the court system, none of the dangers of summary action was inherent, nor was there the danger of the courts assuming responsibility which was normally Japanese. In truth, the court system was instrumental in shifting more responsibility to the Japanese. In August, 1946, the Japanese government was given the authority to try in Japanese courts all offenses consisting of acts prejudicial to the occupation forces when only Japanese personnel were involved. Acts prejudicial to the occupation forces were defined as "acts which violate any directive issued to the Imperial Japanese Government by the Supreme Commander for the Allied Powers, or which violate any orders or instructions issued by occupation force commanders to implement SCAP's directives."[35] In effect, this directive gave to operational directives and SCAP directives the same status enjoyed by Japanese statutes. The Japanese people were therefore held responsible for compliance with such directives even before appropriate enactment into Japanese law, and Japanese courts were responsible for trying offenses against these directives. American directives became, in effect, Japanese statutory law. This new interpretation of SCAP directives and Eighth Army directives was made known in Imperial Ordinance No. 311, effective July 15, 1946. It was promulgated "by the Japanese to implement the Supreme Commander for the Allied Powers' policy of entrusting to the Japanese people and government the responsibility for executing his directives."[36] While the occupation forces reserved the right to try any criminal case in provost courts, this was a prerogative rarely exercised. The provost court system, then, became one of the chief instrumentalities for transferring responsibility to the Japanese government, and thus for putting into practice the key policy of the occupation.

VI

The relations between military government officials in the field and political parties and activities have not always been consistent with the basic occupation policy of non-interference in domestic affairs of the Japanese. In 1946, elections of Diet members came before the occupation had reached a level of maturity and stability at which a policy of aloofness could be effectively maintained. The

[35] Headquarters, Eighth Army, *Operational Directive 29/2*, Aug. 17, 1946.
[36] *Ibid.*, par. 2.

new freedom accorded the development of political parties in Japan was unprecedented. The possibility of great gains by liberal elements of the electorate, the addition of women to the lists of eligible voters, and reduction of the voting age from 25 to 21, threatened to change the complexion of political power. Accordingly, members of the House of Representatives were unusually active in the prefectures from which they held office.

Political parties appreciated the prestige and influence which the prefectural military government officials exercised. They were, moreover, aware that the Japanese people imputed an almost unlimited range of authority to the military government units. One of the most effective election techniques was to create the impression that a particular party was associated with the military government and that it occupied a favored position. In many instances, parties put forward candidates who had some association with the United States, such as residence or travel, or knowledge of the English language. This further enforced the impression that the party was closely associated with American institutions, ideals, or personalities.

In not a few instances, shrewd party politicians were able to manipulate naïve military government officials into positions which greatly strengthened the cause of the party. In one prefecture, the senior military government officer appeared on the same platform with a candidate at a political rally. The candidate, who possessed graduate degrees from the University of Illinois and Harvard University, invited the officer to appear while he lectured the people on the "occupation policy of the generous American people." And the appearance of the American and the blundering comments he made, together with the news account of his appearance in the Japanese press, created the impression that the Americans were supporting the candidate, who was elected by a wide majority.

Political parties were quick to discern the American weakness for entertainment, parties, and celebrations, and adjusted their strategy accordingly. Many an American military government officer was embarrassed to learn from the Japanese press that he and his staff had attended a party given by the Social Democrats or the Progressives, and that the candidates of that party had the support of the American forces. The absence of any regulation which prohibited fraternization with Japanese, the cleverness of the

party politicians, and the political unsophistication and poor taste of American administrators undoubtedly helped many a candidate to office in the 1946 election. Most of the behavior of this type was unintentional on the part of Americans. In only a few instances did military government personnel make deliberate attempts to influence elections—in some cases by discouraging Communist rallies and other activities. For example, squads of soldiers armed with machine guns were often detailed to supervise small Communist rallies, although larger and often more disturbing gatherings of other political parties went unnoticed. Such practice was not in consonance with occupation policy, which purported to regard the Communist party on a level with other political parties. No prohibitions were attached to the activities of Communists until the MacArthur order of May 20, 1946, banning the use of demonstrations as a political weapon. The statement charged that two giant demonstrations held earlier in the month were inspired by "elements of Japanese society" characterized as being both "minor" and "disorderly," which to the Japanese meant only one thing, "Communists." The subsequent MacArthur statement of January 31, 1947, forbidding use of the general strike reinforced this impression among the Japanese.

Moreover, from the basic policy of non-interference in domestic affairs of Japanese governance, it could be assumed that aloofness from activities of political parties was fundamental. In 1947, the policy of aloofness from political activities was made clear in a command directive issued to all occupation personnel. These command instructions were issued with instructions directing occupation forces to exercise surveillance over the election process. They stated in part: "Above all, remember that it is essential that throughout the campaign a policy of strictest impartiality must be scrupulously maintained. Allied personnel must not participate in the campaign. They are observers only. Nothing in their word or behavior should be permitted to indicate preference or discrimination against any party or candidate no matter how great or how lowly the position involved. Any incident which may embarrass the Occupation Forces or any criticism of the behavior of the Occupation Forces must be reported immediately to SCAP. This is a Japanese election under Japanese laws, and execution must be carried out under Japanese officials. In no case may you interfere with the administra-

tive authority of these officials. Your duties are (1) to observe, (2) to refer violations to Japanese officials following action for final disposition, and (3) to report to higher authority.[37]

It was necessary that this policy be clearly enunciated, for in 1947 activities of political parties were much greater than in 1946. Not only were there more elections in 1947, but they were more carefully surveyed by American military personnel.[38] In 1946, there was one election;[39] in 1947, there were four elections. In 1947, the number of polling places increased from 21,089 in 1946 to 42,617. Moreover, in 1947 an average of 50 per cent of the polling places were surveyed, and 53 per cent of the ballot-counting stations were visited, by occupation personnel.

If in 1947 there was any such innocent association of military government with political parties as occurred in 1946, at least instructions from SCAP made such behavior clearly illegal. Yet it would be folly to hazard a guess as to the effective compliance by American field personnel with such instructions. The insufficiency of controls by SCAP over the field units, the astuteness of the Japanese, and the corresponding lack of political sophistication on the part of most military government administrators, are factors which militate against effective application of the policy of aloofness. There can be no real assurance that party leaders of great political acumen do not even yet succeed in associating the prestige of the occupation forces with the cause of partisan politics, to the advantage of the party and to the serious detriment of a policy of strict impartiality to which American forces have committed themselves.

[37] General Headquarters, Supreme Commander for the Allied Powers, *Summation of Non-Military Activities*, No. 23, Aug., 1947, pp. 44 and 47.

[38] Patrols of tactical troops were used to assist military government personnel in these duties.

[39] Election for members of the Diet, in which women voted for the first time.

CONSTITUTIONAL LAW IN 1947-48

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1947

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There were no changes in the personnel of the Court during the 1947 term. The former Chief Justice, Charles Evans Hughes, who had retired from the Court on July 1, 1941, died on August 27, 1948. Justice Hughes had served on the Court from May 2, 1910, to June 10, 1916, and was appointed Chief Justice on February 13, 1930, succeeding William Howard Taft. In characteristic fashion,[1] the justices filed during the 1947 term a very large number of dissenting and concurring opinions liberally salted with spirited and often bitter judicial invective.

A. QUESTIONS OF NATIONAL POWER

1. THE WAR POWER

Cases involving the nature and scope of the war power still come up. In Woods v. Miller[2], a unanimous bench upheld the constitutionality of the rent-control section of the Housing and Rent Act of 1947, which had been enacted after the termination of hostilities and had gone into effect on July 1, 1947. Leaning heavily upon a World War I precedent,[3] the Court held that the war power includes the power to deal with problems resulting from war, and continues for the duration of the emergency. The housing deficit was, in considerable measure, due to the heavy demobilization of veterans and to the lack of residential construction during the war. "Since the war effort contributed heavily to that deficit," Justice Douglas wrote, "Congress has the power even after the cessation of hostilities to act to control the forces that a short supply of the needed article created." The fact that this power may be abused is no reason for an adverse judgment, for any power may be abused, and "we cannot assume that Congress is not alert to its constitutional responsibilities." In any event, future cases will be open to judicial inquiry. Nor does the statute unconstitutionally take property without compensation. "The fact that the property regulated suffers a decrease in value is no more fatal to the exercise of the war power . . . than it is where the police power is invoked to the same end." Justice Jackson wrote a concurring opinion because he felt that he should

[1] For an excellent summary of the general tendencies of recent years, see C. Herman Pritchett, *The Roosevelt Court* (New York, 1948).

[2] 333 U.S. 138 (1948).

[3] Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146 (1919).

express more explicit misgivings about the war power, "the most dangerous one to free government in the whole catalogue of powers." He refused to believe that the war power "may be indefinitely prolonged merely by keeping legally alive a state of war that had in effect ended." Nevertheless, since we still have armies abroad, and have not yet made peace "with our allies, not to mention our principal enemies," he could not say that the present state of war is "merely technical."

In Lichter v. United States,[4] the Court held constitutional the Renegotiation Act of 1942, as amended, on the theory that renegotiation of excessive profits is a form of conscription. If Congress can conscript men, Justice Burton argued, *a fortiori* it can conscript property or profits. Since Congress adopted the plan for the renegotiation of profits as an alternative to converting the nation into a totalitarian state, the plan is no badge of servitude, but on the contrary "the very symbol of a free people." The Court also ruled that the prohibition of "excessive profits," with power vested in each department head to require contractors to renegotiate, and without any statutory definition of the crucial term, does not unconstitutionally delegate legislative power. The effective use of the war power requires the exercise of an especially broad discretion as to methods to be employed. The war power is "an effective power to wage the war successfully." In this field of activity it is especially important to have flexibility, and to permit the adaptation of congressional policy to "infinitely variable conditions." Furthermore, the Court thought that the later amendatory legislation was based on administrative practices well-known to Congress, and that in fact "the congressional definition confirmed the administrative practice." Finally, the Court ruled that the term "excessive profits" was no more vague than such well-established standards as "just and reasonable rates," "public interest, convenience, or necessity," "fair return," "fair value," and "unfair methods of competition."

In Ludecke v. Watkins,[5] the Court ruled that the power vested in the President by the Alien Enemy Act of 1798 to order the deportation of enemy aliens is not subject to judicial review. It was noted that the Administrative Procedure Act of 1946 explicitly recognizes that some statutes "preclude judicial review." Furthermore, it was held that this summary presidential power survived the cessation of actual hostilities. If this were not so, Justice Frankfurter argued, the power to deport aliens would be nullified, since deportation is hardly practicable during the shooting war. Law does not "lag behind common sense," and "war does not cease with a cease-fire order." The termination of war, whether by treaty, statute, or presidential proclamation, is a political act. "The war power," Justice

[4] 334 U.S. 742 (1948). [5] 335 U.S. 160 (1948).

Frankfurter pointed out, "is the war power," and he noted that "the Act is almost as old as the Constitution, and it would savor of doctrinaire audacity now to find the statute offensive to some emanation of the Bill of Rights." Justice Black, speaking also for Justices Douglas, Murphy, and Rutledge, detected an emanation. He thought that "the idea that we are still at war with Germany in the sense contemplated by the statute controlling here is a pure fiction." In his judgment, no act of Congress gives the President power, after hostilities have ended, to deport an alien without a fair hearing reviewable in the courts. Since Germany has surrendered unconditionally, German aliens could not aid the German government in conducting war against the United States, even if they wanted to do so. He declared that "the First Amendment represents this nation's belief that the spread of political ideas must not be suppressed. And the avowed purpose of the Alien Enemy Act was not to stifle the spread of ideas after hostilities had ended." Justice Douglas also wrote a dissenting opinion, maintaining that due process requires notice, hearing, and judicial review in any deportation proceeding and emphasizing that "due process does not perish when war comes."

Finally, the power of the government to seize the property of enemy aliens was unanimously reaffirmed in Silesian-American Corp. v. Clark.[6] Consistently with the total character of modern warfare, Justice Reed declared that "every resource within the ambit of sovereign power is subject to use for the national defense." Congress may constitutionally authorize the taking of this property as a means of preventing the rendering of any assistance to the enemy.[7]

2. THE COMMERCE POWER

The most important case of the term testing the constitutional scope of the federal commerce power was United States v. Sullivan.[8] A laboratory had shipped in interstate commerce, from Chicago to a consignee in Atlanta, Georgia, a number of bottles, each containing 1,000 sulfathiazole tablets. Each bottle had a label attached to it, as required by the Food, Drug, and Cosmetic Act of 1938, with adequate directions for the use of the tablets and warnings to protect ultimate consumers. A retail druggist in Columbus, Georgia, purchased one of these bottles from the Atlanta consignee, and on two occasions, twelve tablets were removed from the properly-labeled bottle, placed in pill boxes, and sold to customers with-

[6] 332 U.S. 469 (1947). A World War I precedent was a principal authority, United States v. Chemical Foundation, 272 U.S. 1 (1926).

[7] In Clark v. Uebersee Finanz-Korporation, 332 U.S. 480 (1947), the Court held that a friendly alien has a statutory right to sue the Alien Property Custodian to reclaim property, upon a showing of an absence of enemy interest.

[8] 332 U.S. 689 (1948).

out adequate directions given for use or warnings of danger. A majority of six justices held that Congress intended to insure federal protection until the very moment the articles passed into the hands of the consumer by way of an interstate transaction. The constitutional issue, in their judgment, was governed by the McDermott case,[9] which sustained the Pure Food and Drugs Act of 1906. It is immaterial that in the McDermott case the possessor of the articles held for sale had himself received them by way of an interstate sale and shipment. The reasons for the earlier holding "are equally applicable and persuasive here." Speaking for a minority of three, Justice Frankfurter argued that the statute was not intended to cover this situation, remarking that "if it takes nine pages to determine the scope of a statute, its meaning can hardly be so clear that he who runs may read, or that even he who reads may read."

3. FEDERAL JUDICIAL POWER

The Tompkins Rule. Two cases came up involving applications of the ubiquitous Tompkins Rule. In King v. United Commercial Travelers,[10] the Court held that in applying local law in a diversity case, a federal court is not bound to follow an unpublished decision of a court of first instance which is the only state decision on the subject, the existence of which can be determined only by an examination of court records, and which is not regarded by the state courts as a binding precedent. The Court ruled, in Francis v. Southern Pacific Co.,[11] that the liability of an interstate railroad toward an employee riding on a free pass, and not travelling in connection with any duties he had as an employee, is governed by federal law and does not come within the scope of the Tompkins Rule. Justice Douglas thought a federal rule grew out of pertinent provisions of the Hepburn Act of 1906 and the Transportation Act of 1940, as interpreted over the years by the Supreme Court. Speaking for a minority of three, Justice Black maintained that the rule of liability applied here by the Court was based on a theory of judge-made "general common law" which was repudiated by the Tompkins case.[12] The absence of specific federal legislation, in his view, is "the equivalent of a loud congressional warning to courts to refrain from encroaching on state powers here." He also thought that the Court's decision is "at war with the basic philosophy which has found expression in other industrial and social legislation for many years," for increasingly the care of the accidentally injured has become a matter of great public concern. "When precedent and precedent alone is all the argument that can be made to support a court-fashioned rule, it is time for the rule's creator to destroy it."

[9] McDermott v. Wisconsin, 228 U.S. 115 (1913).
[10] 333 U.S. 153 (1948). [11] 333 U.S. 445 (1948).
[12] Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938).

Declaratory Judgments. An interesting discussion of the use of the declaratory judgment was written by Justice Frankfurter in Eccles v. People's Bank.[13] Here the Bank became a member of the Federal Reserve System on the condition that if any interest in the Bank was acquired by a holding company without the prior approval of the Federal Reserve Board, it should be required to withdraw from the system. Later on, the Transamerica Corporation, without the Board's previous knowledge, acquired 540 of the 5,000 shares of the Bank's outstanding stock. The Bank advised the Board of this fact, and requested that it be relieved of the condition. The Board took the position that the mere acquisition by Transamerica of this interest in the Bank did not indicate that its independence was thereby subverted, and formally disavowed any intention of invoking the condition. Thereupon the Bank instituted a proceeding under the Federal Declaratory Judgment Act to have the condition declared invalid. The Court ruled that the Bank's grievance was "too remote and insubstantial, too speculative in nature," to justify an injunction, and that therefore relief in the form of a declaration of rights is equally inappropriate. Like other forms of equitable relief, a declaratory judgment issues only "as a matter of judicial discretion, exercised in the public interest," and particularly when governmental action is involved, a court should not intervene unless the need for relief is clear and immediate, not remote or speculative. Justices Reed and Burton, dissenting, took the view that the condition is a substantial threat, not only of future injury, but also of a present injury, because of its effect on the marketability of the Bank's stock.

Scope of Judicial Review. A decision of far-reaching importance with respect to the scope of judicial power was made by a five-to-four vote of the Court in Chicago and Southern Air Lines v. Waterman S. S. Corp.[14] The majority ruled that the section of the Civil Aëronautics Act authorizing judicial review of orders of the Civil Aëronautics Board does not apply to orders which grant or deny applications by citizen carriers for permission to engage in overseas and foreign air transportation, and which are subject to approval by the President. Here the Board, with the express approval of the President, issued an order denying the Corporation a certificate of convenience and necessity for an overseas air route, and granted one to a rival company. The circuit court took jurisdiction on the theory that while it has no power to review the President's action, a Board order is incomplete until it has been reviewed in court, after which the completed action goes to the President. The Court held that the public interest in such "a revolutionary commerce" as air transport is related to questions of foreign relations and national defense. Under the statute,

[13] 333 U.S. 426 (1948). [14] 333 U.S. 103 (1948).

the decisions of the Board are subject not merely to the President's veto, but to "positive and detailed control, . . . unparalleled in the history of American administrative bodies." Here the President has certain constitutional powers of his own, as commander-in-chief and director of foreign relations, as well as statutory powers. Under these circumstances, it is improper for a court to review his orders; for they are political decisions "of a kind for which the Judiciary has neither aptitude, facilities, nor responsibility." The Court rejected the argument that the Board's orders should first be subject to judicial review, after which the reviewed order should go to the President. Not only would that entail practical disadvantages of delay and obstruction, but it ignores the fact that until the President has acted there is no final administrative determination to review. To say that even after court review of a Board order the President could still do as he pleases is to say, in fact, that the court should give an advisory opinion. Speaking for the dissenters, Justice Douglas argued that the Board's orders can be reviewed, as authorized by the statute, at least to the extent that the Board's orders have an existence independent of presidential approval; in his theory, an order is reviewable when it has received presidential clearance, but review is restricted to the action of the Board, and the Board alone.

A related issue was at stake in Cox v. United States,[15] also decided by a five-to-four vote. Three Jehovah's Witnesses claimed classification as ministers of religion before their draft board. The board, however, classified them as conscientious objectors, and assigned them to a public service camp. After exhausting their administrative remedies, all three reported to the camp, but later on two of them were indicted for leaving the camp without permission, and the other for failing to return after a leave. At their trial, the judge instructed the jury that it was not to concern itself with the validity of the classification orders. On the basis of the Falbo case,[16] the district court took the position that no judicial review of any sort could be had of a selective service order. But the circuit court, on the authority of the Estep case,[17] held that a limited judicial review could be obtained, and, after reviewing the selective service files, held that the evidence was "substantially in support" of the board's classification. The Supreme Court held that judicial review is available, but that its scope is extremely limited, since the statute makes the decisions of the local boards "final." The board's decision is final even if erroneous; a court may set it aside only if there is no basis in fact for the classification. It was not error to refuse to submit the issue of the appropriateness of the classification to the jury, for "the constitutional right

[15] 332 U.S. 442 (1947).
[16] Falbo v. United States, 320 U.S. 549 (1944).
[17] Estep v. United States, 327 U.S. 114 (1946).

to jury trial does not include the right to have a jury pass on the validity of an administrative order." Furthermore, the plaintiffs had no constitutional right to introduce new evidence at the trial, since they had been free to get all the facts they had into the board records.[18] Justice Douglas was of the opinion that the local board had no adequate basis in fact to deny the plaintiffs their classification as ministers. Justice Murphy objected to the standard of review adopted by the Court, since under it the judge has little more to do than give automatic approval to the board's action. This is not, he maintained, an ordinary review of ordinary civil proceedings, but a criminal trial in which a claim to freedom of conscience and religion was denied. "These stakes are too high, in my opinion, to permit an inappreciable amount of supporting evidence to sanction a draft board classification."

Non-Judicial Functions. In United States v. Evans,[19] the Supreme Court affirmed the dismissal by a district court of an indictment for violating a section of the Immigration Act of 1917 on the ground that the statute was so ambiguous that the Court could only guess as to which of several possible constructions Congress meant to apply. In our system, Justice Rutledge pointed out, "defining crimes and fixing penalties are legislative, not judicial, functions."

4. SUABILITY OF FEDERAL CORPORATIONS

In Federal Crop Insurance Corp. v. Merrill,[20] a sharply divided Court decided a point of considerable significance for public administration. The Corporation, an enterprise wholly owned by the government, made a regulation, authorized by the Federal Crop Insurance Act, and duly published it in the *Federal Register*, to the effect that no insurance will be given for reseeded wheat. A local agent of the Corporation, a county agricultural conservation committee, gave an Idaho farmer insurance on 400 acres reseeded on winter wheat acreage. Neither the committee nor the farmer knew of the rule in the *Federal Register*. In a suit on the policy, the state courts held that since, in a comparable case, a private insurance company would be bound by the representations of its agent, the government corporation is obliged to stand behind this commitment. Five justices, speaking through Justice Frankfurter, disagreed. This corporation, it was pointed out, is not a private insurance company. "It is too late in the day to urge that the government is just another private litigant, for purposes

[18] The Court distinguished Ng Fung Ho v. White, 259 U.S. 276 (1922). This case held that an alleged alien was entitled to a judicial trial on the issue of alienage in habeas corpus proceedings, since the alleged citizen could not get a hearing before the Commissioner of Immigration, whereas here the parties had as full a hearing as they desired.

[19] 333 U.S. 483 (1948). [20] 332 U.S. 380 (1947).

of charging it with liability, whenever it takes over a business theretofore conducted by private enterprise or engages in competition with private ventures." The Court went on to state the now familiar rule that whenever the federal government acts, and whether through conventional executive agencies or corporations, it acts governmentally. Anyone who enters into dealings with the government "takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority." Just as everyone is bound to know what is in the United States Statutes at Large, so the individual is given adequate legal notice of administrative rules and regulations when they appear in the *Federal Register*. Justice Jackson pointed out, in his dissenting opinion, that if a farmer has to read the *Federal Register* he will not need crop insurance, since he will never find time to plant any crops.

5. FEDERAL BILL OF RIGHTS

Free Speech. In United States v. C.I.O.,[21] a majority of the Court passed up an opportunity to rule on the constitutionality of Section 304 of the Taft-Hartley Act of 1947, which made it unlawful for any labor organization to make a contribution or expenditure in connection with any federal election. An indictment against the C.I.O. and its president, Philip Murray, was returned in the district court of the District of Columbia, for publication in *The C.I.O. News* of a statement by Murray urging all members to vote for a particular congressional candidate. The district court dismissed the indictment on the ground that the statute violated the First Amendment. While the Supreme Court affirmed unanimously the judgment of the lower court, five justices held that Congress did not intend to prevent a trade journal or house organ from expressing views on candidates for office or political proposals in the regular course of publication. But these judges did say that if the statute forbade a union to advise its members, in the regular course of affairs, as to measures and elections, there would be "the gravest doubts" as to its constitutionality. Justice Rutledge, concurring, thought that the Court abdicated its function of passing on the validity of the act. The statute is patently unconstitutional, and the Court ought to say so. Whatever weight may be given to the argument that the participation of unions in politics is bad is more than counterbalanced by the loss of democratic processes resulting from restrictions on full and free discussion. "The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes." In a superb statement, Justice Rutledge reminded the Court that it is committed to the proposition that legislation which on its face restricts rights of conscience, expression, and assembly is not entitled to the customary presumption of validity, that First Amendment

[21] 335 U.S. 106 (1948).

freedoms have a preferred position in our public law, and that invasion of these freedoms is justified only by the "immediate impendency of dangers to the public interest."

Searches and Seizures. There were three significant decisions during the term under review dealing with the complex subject of unreasonable search and seizure. In United States v. Di Re,[22] an informer told the police officers that he was to buy counterfeit gasoline ration coupons from a certain person. The officers found, at the designated time and place, in a parked automobile, its owner, from whom the informer made his purchase, and a third person, Di Re. Di Re was thereupon arrested without a warrant, and without protest he accompanied the officers to the police station. There a search of his person disclosed an envelope, concealed inside his clothing, containing a hundred counterfeit gasoline ration coupons. The Court held that both the search and the arrest had been illegal. It rejected the notion, which was nurtured by the Carroll case,[23] that an automobile is more vulnerable to search without a warrant than other property. In that case, it was pointed out, the search was authorized by the National Prohibition Act. "In view of the strong presumption of constitutionality due to an act of Congress, especially when it turns on what is 'reasonable,' the Carroll decision falls short of establishing a doctrine that, without such legislation, automobiles none the less are subject to search without warrant in enforcement of all federal statutes." The Court did not actually decide the issue of car-search, because it was convinced that there had been no search of the car itself. But even assuming, *arguendo*, that there was a reasonable cause for searching the car, this did not confer the right to search the person of its occupants without a warrant. "We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled." The argument of the government that the right to search Di Re was conferred by the fact of a justifiable arrest was also rejected, since the arrest itself, under applicable local law, was illegal. Nor may an inference of probable cause be drawn from the fact that Di Re did not protest his arrest or at once assert his innocence. Of course one has a right to resist an unlawful arrest, "but courts will hardly penalize failure to display a spirit of resistance or to hold futile debates on legal issues in the public highway with an officer of the law. . . . The presumption of innocence is not lost or impaired by neglect to argue with a policeman." Finally, it was held that the search was not justified by what eventually turned up; a bad search does not change its character from its success.

A conviction for violating the federal narcotics law was set aside in

[22] 332 U.S. 581 (1948). See "Searches and Seizures: 1948." *University of Chicago Law Review*, Vol. 15, pp. 950–959 (Summer, 1948).

[23] Carroll v. United States, 267 U.S. 132 (1925).

Johnson v. United States.[24] In this case, on the tip of an informer, and after smelling burning opium in a hotel hallway, government agents knocked on the door and were admitted; a search of the room led to the discovery of opium and smoking apparatus, and an arrest was made. The Court held that the officers should first have procured a search warrant from a magistrate, and that mere inconvenience or some slight delay to prepare papers and present evidence to a magistrate are never very convincing reasons for not doing so. Since the arrest itself was unlawful, the Court rejected the argument that the search without warrant was valid as being incidental to an arrest. Four justices dissented without opinion.

In still another five-to-four decision, Trupiano v. United States,[25] the Court set aside a conviction based on the seizure of an illicit distillery without a search warrant under circumstances where one could very easily have been obtained. Wherever reasonably practicable, law enforcement agents must secure search warrants, for, Justice Murphy pointed out, as a rule it is desirable that "magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities. . . . In their understandable zeal to ferret out crime and in the excitement of the capture of a suspected person, officers are less likely to possess the detachment and neutrality with which the constitutional rights of the suspect must be viewed." The debatable point in this case arose from the fact that one of the arrested moonshiners was standing very close to the seized still. This proximity to the contraband, the Court ruled, was "a fortuitous circumstance which was inadequate to legalize seizure"; he might have been somewhere else. The mere fact that there has been a valid arrest does not legalize a search or seizure without a warrant; if that were the case, the exception would swallow the general principle. The recent Harris case[26] was explained away on the theory that there the government had no foreknowledge of the facts, as it did here, and further, on the ground that there it was government property (draft cards) that was seized. The dissenting opinion of Chief Justice Vinson argued that this case involved the arrest of a person committing a crime in the presence of the officers and the seizure of contraband in plain sight, for which no previous exploratory search was necessary. To insist upon a warrant here serves only to help guilty men escape the consequences of their crimes and menaces the effective operation of government, without which all civil liberties are insecure. As to the fortuitous character of the moonshiner's presence, the Chief Justice pointed out that any such arrest is based in part on chance, since "criminals do not normally choose to engage in felonious enterprises before an audience of police officials."

Self-Incrimination. The present Court is equally at loose ends on the

[24] 333 U.S. 10 (1948). [25] 334 U.S. 699 (1948).
[26] Harris v. United States, 331 U.S. 145 (1947).

vexing question of self-incrimination. The one federal case on this subject in the last term, Shapiro v. United States,[27] was decided by a majority of five judges, and three of the four dissenting judges filed opinions. Shapiro was tried on charges of having made tie-in sales in violation of regulations issued under the Emergency Price Control Act. A section of the act extended immunity from prosecution to anyone specifically claiming his privilege against self-incrimination. The Court took the position that Congress required records to be kept as a means of enforcing the statute, and did not intend to frustrate the use of those records for enforcement action by granting an immunity bonus to individuals who are compelled to disclose their records. In adopting the immunity clause, Congress was aware of its settled judicial construction, which was that no immunity attaches to non-privileged documents. It was decided that Congress intended to make the statutory immunity coterminous with what would otherwise have been the plaintiff's constitutional privilege. Then Chief Justice Vinson went on to rule that the statute as thus interpreted is constitutional, and that these records are required by law in order to carry out appropriate governmental regulations. In dissenting, Justice Frankfurter argued that constitutional issues were raised unnecessarily, and he disagreed with the contention that records which are required to be kept by law *ipso facto* become public records. If that is so, "we are indeed living in glass houses," since almost every major public law has record-keeping provisions.

Right to Counsel. The Court is still badly divided on the much-litigated issue of the right to counsel. Von Moltke v. Gillies[28] involved a woman who was indicted on the charge of conspiring to collect and deliver to German agents vital military information. After her arrest, she was held incommunicado for some eight days, during which she was questioned by FBI agents. Later she was given a copy of the indictment, a document of over fourteen pages, charging 24 defendants with conspiracy, and enumerating 47 overt acts, five of which specifically referred to her. At her arraignment, the court appointed a young lawyer who happened to be in the courtroom to "represent" her, and his "representation" consisted in a whispered conversation of about three or four minutes. A few days later, after signing a written waiver of counsel, following a few perfunctory questions from the bench on the subject, she pleaded guilty. She had received some legal advice from government representatives, some of them lawyers. Four justices, speaking through Justice Black, were convinced that the plaintiff had been denied the right to counsel as guaranteed by the Sixth Amendment. They thought that the Court should be particularly solicitous of preserving this right where the accused "was kept under close surveillance, and was the object of widespread public hostility." It is as im-

[27] 335 U.S. 1 (1948). [28] 332 U.S. 708 (1948).

portant to be represented by counsel at the pleading stage as at the trial itself, especially where the accused is confronted with a complex indictment charging conspiracy, the elements of which are particularly complicated. A federal judge has a "solemn duty" to make a "thorough inquiry" and take all steps necessary to insure the fullest protection of this constitutional right. This is not a mere procedural formality. The last-minute appointment of a lawyer at the arraignment, who conferred for less than five minutes, was only "token obedience" to duty. And the justices observed that the waiver of counsel must be intelligent and competent, that there is a strong presumption against waiver, and that the judge "must investigate as long and as thoroughly as the circumstances of the case before him demand." The mere fact that the accused tells the judge that he wishes to waive his right to counsel does not excuse him from making "a penetrating and comprehensive examination of all the circumstances" to make sure that the professed waiver was understandingly and wisely made. "A mere routine inquiry," in which a few standard questions are asked and a standard form is signed, is not enough. Nor was it enough that the defendant had received some advice from government agents; the Sixth Amendment contemplates the services of a lawyer devoted entirely to the interests of his client. Justices Frankfurter and Jackson concurred in the judgment, but only on condition that the case be remanded to the district court to make further and more definite findings of fact as to what advice the FBI agents gave the plaintiff on a crucial legal point. Justice Burton, with whom the Chief Justice and Justice Reed agreed, filed a dissenting opinion, arguing mainly that there is a presumption of regularity attaching to judicial proceedings, and that one who challenges it must sustain a heavy burden of proof.

An interesting procedural point was decided by a sharply divided court in Wade v. Mayo.[29] Here a young man of eighteen was convicted in a Florida court on a charge of breaking and entering. Claiming poverty, he asked the trial judge for the appointment of counsel and was refused. Soon afterwards he filed a petition for habeas corpus in the state circuit court, but the writ was denied on the ground that under Florida decisional law the trial court is not obliged to appoint counsel in a non-capital case. He appealed to the state supreme court and lost there. He did not then attempt to secure a writ of certiorari from the United States Supreme Court. A year later he filed a petition for habeas corpus in a federal district court. In holding in his favor, the Court modified seriously the intimation in the Hawk case[30] that the rule of the exhaustion of state remedies includes an attempt to seek review in the United States Supreme Court. Justice Murphy said that there is no hard and fast rule to this effect, and "especially in view of the volume of this Court's business" and

[29] 334 U.S. 672 (1948). [30] *Ex parte* Hawk, 321 U.S. 114 (1944).

the fact that writs of certiorari are matters of grace. Furthermore, he thought that "the flexible nature of the writ of habeas corpus counsels against erecting a rigid procedural rule." On the merits, the Court upheld the finding of the district court, that an inexperienced eighteen-year-old youth was incapable of representing himself in a trial, even though it apparently involved no complicated legal questions. It is immaterial that the state law does not require the appointment of counsel in non-capital cases, for the constitutional right "stems directly from the Fourteenth Amendment and not from state statutes." Four judges thought the Court should stand by the rule of the Hawk case.[31]

Just Compensation. Diverse views as to what constitutes just compensation were entertained in United States v. John J. Felin & Co.[32] The government had requisitioned some pork chops for war purposes, and the Court of Claims awarded damages to the slaughterhouse above the maximum OPA prices, measuring the value of the meat by the replacement cost. Though the Court of Claims was reversed by a vote of seven justices, they were sharply divided in their reasoning. Justice Frankfurter, with whom Chief Justice Vinson and Justice Burton agreed, maintained that in view of the peculiar and complicated nature of the meat industry, the cost of various cuts cannot be computed separately, and that therefore the company had not sustained the burden of proving that it would suffer damages by not receiving more than ceiling prices. The profit and loss data of a slaughterer's entire operations are the only dependable figures from which the fairness of meat prices can be deduced. In this opinion Justice Frankfurter made a bid for some kind of immortality with the observation that a hog is not merely "an articulated pork chop." Three justices, Reed, Black, and Murphy, maintained that the measure of just compensation is the market value of any product, and that the only measure of value here was reflected in the ceiling prices. Any additional losses are merely consequential, for which compensation is not given in federal condemnation proceedings. Justices Jackson and Douglas dissented, taking the position that what the Constitution guarantees is just compensation and not the market price. They thought that just compensation cannot be the legal equivalent of a controlled price unless that price is also always required to equal just compensation.

Jury System. A unanimous Court held, in Andres v. United States,[33] that in all federal courts (here the district court of Hawaii) the constitutional requirements of unanimity of jury verdicts extends to all issues which are left to the jury, the nature of the punishment as well as the question of guilt.

[31] Two interesting issues relating to the procedural side of habeas corpus, one of which was new, are discussed at length in Price v. Johnston, 334 U.S. 266 (1948), decided by a five-to-four vote.

[32] 334 U.S. 624 (1948). [33] 333 U.S. 740 (1948).

6. INTERPRETATION OF FEDERAL STATUTES

As is true for every term of Court, there were a number of cases involving interesting and significant questions of statutory interpretation which were decided in a constitutional law context or which contributed something to etching in the margins of constitutional authority. Five justices ruled that in cases of insolvency, the federal tax priority law requires payment in full of federal unemployment insurance taxes before any comparable state taxes may be paid, even though ordinarily the taxpayer has a 90 per cent federal credit; four justices thought this was "an unnecessarily ruthless interpretation of a statute that at its best is an arbitrary one."[34] Seven justices ruled that an overdue penalty under the Agricultural Adjustment Act of 1938, in the absence of a statutory requirement, does not bear interest, because the government does not suffer any actual money loss or damages; two dissenting justices regarded the penalties as statutory debts, like customs duties or taxes.[35] In sustaining a fraud order against a magazine publisher, the Court refused to say that recent decisions have undermined the philosophy of the Coyne case,[36] which first upheld the constitutionality of mail-fraud legislation.[37] In two cases, the alien deportation statutes were construed liberally in favor of the deportees, the Court pointing out that since deportation is a very serious matter, the deportation laws should not be given "captious interpretations,"[38] and it should not be assumed that Congress meant to invade an individual's freedom beyond the point required by the narrowest of several possible meanings of the words used.[39] In another case, the Court ruled that "the safeguards of cherished rights are not to be found in the doctrinaire application" of the rule of the strict construction of criminal statutes, where "common sense and evident statutory purpose" suggest a different course.[40]

But the most important cases involving the interpretation of statutes were those dealing with the exercise of the federal commerce power. The past term was especially noteworthy for its decisions regarding the antitrust laws. The government won three major actions brought against motion picture distributors. In United States v. Griffith,[41] the Court ruled

[34] Massachusetts v. United States, 333 U.S. 611 (1948).

[35] Rodgers v. United States, 332 U.S. 371 (1947). The Court had previously ruled that a criminal penalty does not bear interest. Pierce v. United States, 255 U.S. 398 (1921).

[36] Public Clearing House v. Coyne, 194 U.S. 497 (1904).

[37] Donaldson v. Read Magazine, 333 U.S. 178 (1948).

[38] Delgadillo v. Carmichael, 332 U.S. 388 (1947).

[39] Fong Haw Tan v. Phelan, 333 U.S. 6 (1948).

[40] United States v. Brown, 333 U.S. 18 (1948).

[41] 334 U.S. 100 (1948). A companion case, involving substantially identical issues, was Schine Chain Theatres v. United States, 334 U.S. 110 (1948).

that it is not always necessary to find a specific intent to restrain trade or establish a monopoly in order to discover an anti-trust violation; it is sufficient that a restraint of trade or monopoly results as a consequence of business arrangements. Furthermore, monopoly power, whether exercised or not, may itself constitute a violation of the Sherman Act, for "the anti-trust laws are as much violated by the prevention of competition as by its destruction." Size is important, declared Justice Douglas, for size means power. The remark in the U. S. Steel case[42] that the Sherman Act does not outlaw mere size was amended with the observation that "size is of course an earmark of monopoly power." There is nothing unlawful about large-scale buying as such, but it may not be used to monopolize or attempt to monopolize interstate commerce. Here four affiliated corporations operated motion picture theatres in 85 towns in three states; there were competing theatres in 32 towns. Through the use of their combined bargaining power, dealing with the distributors through only two agents, the defendants received certain advantages over competitors in the way of first-runs and clearances.

In United States v. Paramount Pictures,[43] the Court sustained, with some modifications, a decree of the district court directed against certain business practices of the nation's eight big distributors of films. The Court ruled that the fixing by distributors of the minimum price admissions which licensees may charge was illegal, since under the Sherman Act "a price-fixing combination is illegal *per se*." Block-booking was also held illegal. The district court's requirement of competitive bidding, picture by picture, and theatre by theatre, however, was rejected, largely because its enforcement would involve the judiciary in continuous and detailed supervision of business, for which it is unsuited. Furthermore, a majority of the Court did not agree with the Department of Justice's contention that vertical integration is illegal *per se*. That depends upon the purpose and upon the power it creates; that is, the power to exclude competition and the intent to do so must be coupled together. "Size is itself an earmark of monopoly power," Justice Douglas remarked. "For size carries with it an opportunity for abuse."

Three sugar refiners, who sold their product in interstate commerce, and who controlled a whole growing area in northern California, entered into an agreement to pay farmers uniform prices for sugar beets. The Court held, in Mandeville Island Farms v. American Crystal Sugar Co.,[44] that this price-fixing came within the prohibitions of the Sherman Act. Justice Rutledge wrote: "The artificial and mechanical separation of 'production' and 'manufacturing' from 'commerce,' without regard to their economic continuity, the effects of the former two upon the latter,

[42] United States v. U. S. Steel Corporation, 251 U.S. 417 (1920).
[43] 334 U.S. 131 (1948). [44] 334 U.S. 219 (1948).

and the varying methods by which the several processes are organized, related, and carried on in different industries, or indeed within a single industry, no longer suffices to put either production or manufacturing and refining processes beyond reach of Congress' authority." He examined such precedents as the Knight case,[45] and declared that they were productive of such consequences that "the evolving nature of our industrialism foredoomed them to reversal." The Sherman Act got "a second rebirth" in 1911 with the Standard Oil and Tobacco cases, and soon afterward in the Shreveport rate case.[46] As a result, it is no longer necessary "to search for some sharp point or line where interstate commerce ends and intrastate commerce begins, in order to decide whether Congress' commands were effective. For the essence of the affectation doctrine was that the exact location of this line made no difference." Furthermore, the amount of the nation's industry here controlled is irrelevant. In fact, it is unnecessary to show a specific injury to interstate commerce; "it is enough that the individual activity when multiplied into a general practice is subject to federal control, . . . or that it contains a threat to the interstate economy that requires preventive regulation."[47]

Morris v. McComb[48] dealt with a common carrier who was engaged in a general cartage business by motor vehicle in and about the metropolitan area of Detroit. Only three to four per cent of its business consisted of the transportation of freight directly in interstate commerce. These interstate services, however, were distributed generally throughout the year, and were performed indiscriminately by the employees and mingled with the performance of services in local commerce. The Court ruled that under these circumstances the Interstate Commerce Commission had jurisdiction. Though few in number, the interstate trips were a "natural, integral, and apparently inseparable part of the common carrier service." Four justices dissented. The finding that the Interstate Commerce Commission had jurisdiction took these employees outside the scope of the Fair Labor Standards Act, and three justices thought that exemptions from the operation of humanitarian legislation should be construed narrowly. Justice Murphy protested that laboring men are not mere chattels, and that their statutory rights should not be discarded by adherence to "formalistic" or "pedantically literal" readings of a statute. A fourth justice thought the rule of the recent Yellow Cab case[49] should apply here.

[45] United States v. E. C. Knight Co., 156 U.S. 1 (1895).

[46] Standard Oil Co. v. United States, 221 U.S. 1 (1911); United States v. American Tobacco Co., 221 U.S. 106 (1911); Shreveport Rate Case, 234 U.S. 342 (1914).

[47] Parker v. Brown, 317 U.S. 341 (1943), was distinguished on the ground that there the agricultural production program was sponsored by the state of California, and not by private parties.

[48] 332 U.S. 422 (1947).

[49] United States v. Yellow Cab Co., 332 U.S. 218 (1947).

In three cases, the Court underscored the proposition that the mere possession of a patent does not authorize the patentees to rig prices or restrain trade in violation of the policy of the Sherman Act.[50] A Federal Trade Commission prohibition of the multiple basing point price system of the Cement Institute, a trade association composed of 74 corporations, was sustained, the Court upholding the finding of an expert, experienced commission that this price system was an unfair method of competition, as well as a violation of the Sherman Act.[51] A bare majority of five justices, however, dismissed a suit brought by the government to enjoin the U. S. Steel Corporation from purchasing the assets of the largest independent steel fabricator on the West Coast, on the ground that the evidence did not prove an unreasonable lessening of competition.[52] Justice Douglas wrote an eloquent dissenting opinion discoursing on the curse of bigness. In another five-to-four decision, the Court reaffirmed its interpretation of the commodities clause of the Interstate Commerce Act in the Elgin case.[53] The holding there was that the prohibition against a railroad transporting any commodity which it owns or in which it has an interest, except for its own use, does not prevent it from transporting the commodities of a corporation whose stock is wholly owned by a holding company which also owns all of the stock of the railroad, unless the control of the railroad is so exercised as to make it the *alter ego* of the holding company.[54] The majority thought that the failure or refusal of Congress to overrule the Elgin rule indicates its adoption of the rule; four justices regarded this as at best an "ambiguous doctrine."[55]

B. QUESTIONS OF STATE POWER

1. DUE PROCESS OF LAW

Religious Liberty. The big religious liberty case of the term was Illinois

[50] United States v. Line Material Co., 333 U.S. 287 (1948); United States v. U. S. Gypsum Co., 333 U.S. 364 (1948); International Salt Co. v. United States, 332 U.S. 392 (1947).

[51] Federal Trade Commission v. Cement Institute, 333 U.S. 683 (1948).

[52] United States v. Columbia Steel Co., 334 U.S. 495 (1948).

[53] United States v. Elgin, J. & E. R. Co., 298 U.S. 492 (1936).

[54] United States v. South Buffalo R. Co., 333 U.S. 771 (1948).

[55] Other decisions involving interpretations of statutes dealing with interstate commerce were: Seaboard Air Line R. Co. v. Daniel, 333 U.S. 118 (1948), holding that a Virginia railroad corporation need not secure a South Carolina charter to engage in interstate commerce in that state, when the Interstate Commerce Commission has ruled that compliance with the South Carolina law would entail substantial delay and needless expense; United States v. Baltimore & Ohio R. Co., 333 U.S. 169 (1948), holding that a stockyards company owning a segment of railroad track linking up portions of a railroad-owned spur affording access to private sidetracks comes within the scope of the anti-discrimination clause of the Interstate Commerce Act; Federal Trade Commission v. Morton Salt Co., 334 U.S. 37 (1948), sustaining a Commission cease-and-desist order against quantity discounts as being in violation of the Robinson-Patman Act.

ex rel. McCollum v. Board of Education.[56] Here eight justices agreed that the "released time" plan of religious instruction in the public schools of Champaign, Illinois, was inconsistent with the principle of the separation of church and state, and therefore under the ban of the Fourteenth Amendment. The decision called forth a great deal of argumentation. Justice Black wrote an opinion in which Justices Rutledge and Burton concurred; Justices Jackson, Rutledge, and Burton agreed with an opinion written by the indefatigable Justice Frankfurter; Justice Jackson wrote a separate concurring opinion; and Justice Reed filed a dissenting opinion. Under the "released time" plan, religious teachers employed by private religious groups are permitted to come into the school buildings weekly, during the regular hours set apart for secular instruction, for 30 to 45 minutes of religious teaching. This is given only to those pupils whose parents have consented in writing. The religious instructors are not paid, but are subject to the supervision and approval of the school superintendent. Pupils not enrolled in the religious classes must go on with their regular secular studies.

Justice Black thought that the "released time" plan is "beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith," and is therefore squarely forbidden by the First Amendment, which all judges agreed in the New Jersey school-bus case[57] "erected a wall of separation between Church and State." He rejected the argument that the First Amendment was intended to forbid only governmental preference of one religion over another.[58] He also insisted that the holding of the Court was not to be construed as evidence of hostility to religion. "For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." Justice Frankfurter reviewed the history of the secularization of American education, pointing out that the Fourteenth Amendment incorporated a principle which was already dominant in the states, and emphasizing the necessity of a separation of secular and religious education in a young and growing country composed of so many different peoples and creeds. The public school, he argued, is "perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people," and therefore it "must keep scrupulously free from entanglement in the strife of sects."

Justice Reed did not believe that the Champaign plan was an establishment of religion. He noted that Thomas Jefferson did not object to re-

[56] 333 U.S. 203 (1948).

[57] Everson v. Board of Education, 330 U.S. 1 (1947).

[58] Professor E. S. Corwin disagrees with this interpretation. "The Supreme Court as National School Board," *Thought*, Vol. 23, pp. 665–683 (Dec., 1948).

ligion being taught at the University of Virginia. He pointed out that there are many valid "aids" to religion, such as tax exemptions, free textbooks, and free lunches. The prohibition of an establishment of religion, he concluded, does not bar "every friendly gesture between church and state. It is not an absolute prohibition." In view of the fact that the giving of some public aid to religion is, as Justice Reed put it, one of the "accepted habits of our people," and the further fact that some 2,200 communities in 46 states have "released time" programs, it is not surprising that this decision has aroused a great deal of lively discussion.[59]

Freedom of Speech and Press. Whether the constitutional guarantee of freedom of speech extends to the use of loud-speakers in public places was the novel issue presented to the Court for solution in Saia v. New York.[60] Here an ordinance of Lockport, New York, forbade the use of sound amplification devices except with the permission of the chief of police, and prescribed no standards for the exercise of his discretion. A Jehovah's Witness was refused permission to give amplified lectures on religious subjects in a public park on Sundays, on the ground that users of the park complained of previous activities of this sort. Five justices held this ordinance unconstitutional on its face as establishing a previous restraint on the right of free speech. The central vice of the ordinance was the absence of standards. "The right to be heard is placed in the uncontrolled discretion of the chief of police." The free speech guarantee, Justice Douglas declared, extends to loud-speakers, for they "are today indispensable instruments of effective public speech. The sound truck has become an accepted method of political campaigning. It is the way people are reached." The city may regulate the volume of noise, and may control the hours and places of public discussion, "by narrowly drawn statutes," but it may not give an official an uncontrolled discretion. In his dissenting opinion, Justice Frankfurter took the position that government may protect people against "aural aggression" and "intrusion into cherished privacy." Various methods have been resorted to in order to make city life endur-

[59] The majority opinions were denounced by the Administrative Board of the National Catholic Welfare Conference in a statement published November 20, 1948, over the signatures of four cardinals and ten bishops, as a victory for "doctrinaire secularism," as an "entirely novel and ominously extensive" interpretation of the First Amendment, and as paying "scant attention to logic, history, or accepted norms of legal interpretation." The statement was printed in full by the *New York Times*. For a contrary statement, see Bishop G. Bromley Oxnam, "Church, State, and Schools," *The Nation*, Vol. 168, pp. 67–70 (Jan. 15, 1949).

[60] 334 U.S. 558 (1948). Books published during the past year touching upon this and kindred subjects include: E. S. Corwin, *Liberty Against Government* (Baton Rouge, La., 1948); J. E. Gerald, *The Press and the Constitution* (Minneapolis, 1948); Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (New York, 1948); and A. N. Holcombe, *Human Rights in the Modern World* (New York, 1948).

able. "Surely," he declared, "there is not a constitutional right to force unwilling people to listen." Justice Jackson dissented on the ground that this case did not involve a free speech issue at all, but only a police question.

Another well-argued case involving freedom of expression was Winters v. New York.[61] Here a bookseller in New York was convicted of violating a statute forbidding the printing, selling, or distribution of any publication "principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust, or crime." The New York Court of Appeals interpreted the statute as forbidding these publications as "indecent or obscene" in the sense that materials dealing with bloodshed or lust "can be so massed as to become vehicles for inciting violent and depraved crimes against the person." A majority of six justices held that this statute, even as interpreted by the state court, was in conflict with the principle of a free press, because the statute was too vague and indefinite to satisfy the standards of certainty necessary for criminal prosecutions. The court rejected the contention that the constitutional protection of a free press applies only to the exposition of ideas, for "the line between the informing and the entertaining is too elusive. . . . Though we can see nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature." Whether the statute satisfies the standards of certainty depends upon whether men of ordinary intelligence must guess at its meaning. While some terms in the criminal law, such as obscene, lewd, lascivious, filthy, indecent, or disgusting, are well understood through long use in the criminal law, the words used in the present statute, even as interpreted, do not give effective notice of what is forbidden. Justice Frankfurter dissented at great length and with considerable vigor, arguing that this statute was sixty years old, and is found on the books of some twenty states, and is thus "neither a casual enactment nor a passing whim." He complained that the Court applied a standard of indefiniteness only in the abstract, without examining the actual magazine involved in the case, which is like playing Hamlet without Hamlet. How, he asked, could New York write a clearer statute? This law is no worse, he argued, than many others which abound in our penal codes.

Self-incrimination. In Lee v. Mississippi,[62] a unanimous Court ruled that in a state criminal proceeding a defendant does not lose the right to contend that a confession was coerced because of previous testimony that the confession was in fact never made. For it is still true that due process does not permit the use of coerced confessions, and in fact a foreclosure of the right to complain of a fundamental wrong would itself be a denial of due process of law.

[61] 333 U.S. 507 (1948). [62] 332 U.S. 742 (1948).

A bare majority of five justices set aside the conviction of a Negro boy of fifteen in Haley v. Ohio,[63] under the following circumstances: Beginning shortly after midnight, he was questioned by some six police officers in relays for about five hours; he was then kept in jail incommunicado for three days, and a lawyer engaged by his mother was denied access to him by the police; his mother was unable to see him for six days, but a newspaper photographer was allowed to do so immediately after the alleged confession; he was not taken before a magistrate and formally charged with a crime until three days after the confession was signed. The Court thought that the methods used here do not square with due process. "A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition." The evidence of what happened after the confession is germane, since these events throw such light on the "callous attitude of the police" as to require the present apologia of the police to be taken with a grain of salt. Justice Frankfurther wrote a concurring opinion because, as in similar cases, the application by judges of the due process concept, a "gossamer concept," troubles him. The criteria for due process are "subtle and elusive," but nevertheless judges cannot escape the duty of judicial review. The least they can do is to be humble and try to avoid writing their mere private notions or personal bias into due process. That can be done only by consulting the "deeply rooted feelings of the community," although it is admittedly difficult to apply this test. He then made the necessary consultation with becoming humility, and discovered that what happened here violated sentiments "deeply embedded in the feelings of the American people." Justice Burton's dissenting opinion argued that whether the confession was voluntary was an issue of fact, depending largely on the credibility of witnesses, and falling within the special competence of the trial judge and jury.

The Court was divided in another case involving the conviction of a young Negro in the Alabama courts, Taylor v. Alabama.[64] The petitioner had been convicted of rape in a jury trial and lost an appeal to the state supreme court. Some eighteen months later, just before his scheduled execution, he petitioned the Alabama supreme court for an order granting him the right to file a petition in the circuit court of his county, where he had been tried, for a writ of error *coram nobis*. He alleged then, for the first time, that the confessions used in the trial had been induced by threats and by physical violence. Five justices held that, on the record, the denial of permission to file the petition was not in itself wanting in due process, since in their opinion the new petition did not present such a *prima facie* case as to require an overruling of the state court's conclusion. Speaking for a minority of three, Justice Murphy wrote a vigorous dissenting opinion, arguing that since due process is denied if a coerced

[63] 332 U.S. 596 (1948). [64] 335 U.S. 252 (1948).

confession is used, the state court is bound to adjudicate this issue in a full hearing.

Right to Counsel. The most important case of the term involving the much-litigated right to counsel was Bute v. Illinois.[65] Here a man of 57 pleaded guilty in an Illinois court to the crime of taking indecent liberties with children. The common law record merely showed that Bute appeared "in his own proper person," but it did not show that the court inquired as to his desire to be represented by counsel, his ability to procure counsel, or his wish to have counsel assigned for him. A majority of five justices affirmed the Illinois supreme court's denial of a writ of error, sought eight years after the plea and sentence, on two main grounds. First, as Justice Burton argued at great length, the due process clause of the Fourteenth Amendment does not require that state courts follow federal procedure, but rather that they observe the "fundamental principles of liberty and justice." This leaves much freedom to the states in exercising their own police powers and controlling the procedures of their criminal trials. The rather absolute rule of the Sixth Amendment, as defined for the federal courts in Johnson v. Zerbst,[66] does not define the minimum requirement which the Fourteenth Amendment demands of the states. Secondly, the Court ruled that in a non-capital case, a state court is not constitutionally obliged to appoint counsel unless there are "special circumstances" showing that without counsel a fair trial had not been had. Here the charges were stated in simple terms not usually misunderstood by a 57-year-old man, however primitive his understanding. Justice Douglas wrote the dissenting opinion, the heart of which was stated as follows: "I do not think the constitutional standards of fairness depend on what court an accused is in. I think that the Bill of Rights is applicable to all courts at all times." Furthermore, the same reasons which require counsel in capital cases apply to all others, for due process is as solicitous about liberty as it is about life.

Similarly, the Court ruled, again by a five-to-four vote, that a person who had previously been a defendant in eight criminal cases does not have to be informed by the court of his right to counsel in a non-capital case, and may be convicted without having had the benefit of counsel.[67] The dissenting justices thought that the absence of counsel was prejudicial on the critical question of sentence. But by a six-to-three vote, the Court reversed a conviction in the Pennsylvania courts, where the record showed that the plaintiff, without being advised of his right to counsel, and without being offered an assignment of counsel, was sentenced on the basis of assumptions about his previous record which were materially untrue, for

[65] 333 U.S. 640 (1948).
[66] 304 U.S. 458 (1938).
[67] Gryger v. Burke, 334 U.S. 728 (1948).

here the lack of counsel was actually prejudicial.[68] So, too, there was error in convicting, without counsel, a young man of 18 who had been in this country only two years, and who understood neither English nor American trial court procedure.[69]

Fair Procedure. The most significant of several cases dealing with the various elements of a fair hearing was *In re* Oliver,[70] in which the Court held that Michigan's unique "one-man grand jury" system was incompatible with due process. A single judge, conducting an investigation into alleged vice and official corruption, and questioning witnesses secretly in chambers, summarily committed Oliver to jail for contempt, on the ground that his story was not consistent with that of a previous witness. Oliver had no counsel and was given no chance to prepare a defense, cross-examine the other witness, or call his own witnesses. "Summary trials for alleged misconduct called contempt of court," Justice Black declared, have not been regarded as an exception to the universal rule of Anglo-American law against secret trials. This nation is committed to the proposition that persons accused of crime are entitled to public trials. Publicity confers many benefits: it is an effective restraint on the possible abuse of judicial power, it gives notice to witnesses unknown to the parties, and the spectators learn about their government and acquire confidence in judicial remedies. Furthermore, Oliver was denied due process in not being given a reasonable opportunity to defend himself against the charge of giving false and evasive testimony under oath. The right of the Court to punish summarily for a contempt committed in its presence was very narrowly limited to cases of "court-disrupting misconduct," where immediate punishment is essential to prevent the demoralization of the court's authority. Justice Rutledge took the position, in a concurring opinion, that this procedure denied many rights guaranteed in the Bill of Rights in addition to due process, and argued that when the states ratified the Fourteenth Amendment they accepted the Bill of Rights for themselves, and should not be permitted to pick and choose among its provisions. "This is no time to experiment with established liberties." Two justices dissented on a procedural point.

The Illinois rule that, on appeal from trial courts, constitutional questions must be taken directly to the state supreme court, and will not be reviewed if taken first to the appellate court, was held to be a reasonable one, since the channel for the review of constitutional issues, all the way

[68] Townsend v. Burke, 334 U.S. 736 (1948).

[69] Marino v. Ragen, 332 U.S. 561 (1947). In a concurring opinion, Justice Rutledge scathingly denounced the intricate Illinois procedures available in these cases as a "merry-go-round," and as "a procedural strangling of federal constitutional rights." See also Loftus v. Illinois, 334 U.S. 804 (1948).

[70] 333 U.S. 257 (1948).

to the United States Supreme Court, was clearly marked, open, and unobstructed.[71] A defendant who was convicted in a trial court of violating one section of a statute, and whose conviction was affirmed by the state supreme court on the ground that the evidence justified a conviction under another section of the statute, which described a different offense, has been denied procedural due process.[72] But where one has been indicted for larceny and later pleads guilty to a reduced charge of second degree attempted larceny, "it would be an exaltation of technical precision to an unwarranted degree" to say that the indictment did not give the defendant sufficient notice of the charge against him.[73]

The Necessity of Definiteness. In Musser v. Utah,[74] several men were convicted of counseling and practicing polygamous marriage in violation of a statute forbidding any conspiracy "to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws." Six justices thought that, standing by itself, the statute would seem to sanction a conviction for almost any act which a judge and jury might find at the moment to be contrary to their notions of what was good for health, morals, trade, commerce, justice, or order. This criminal statute did not, therefore, provide for reasonable standards of guilt. Since this issue had not been raised or litigated below, the case was remanded to the Utah supreme court. Justices Rutledge, Douglas, and Murphy dissented on the ground that the case involved a deeper vice than invalidity for vagueness. They thought the real issue was one of free speech, and they objected to the construction given to this statute by the Utah supreme court to the effect that the law proscribed mere advocacy as well as the practice of polygamy. The Constitution, Justice Rutledge insisted, requires that a line be drawn between advocacy and incitement. The right to speak freely includes the right to talk about polygamy, even in favorable terms.

Jurisdiction to Regulate. The New York Abandoned Property Law provides that matured endowment or life insurance policies issued on the lives of residents of New York shall be deemed abandoned property if unclaimed for seven years. All insurance companies doing business in New York must, under threat of heavy penalties, make an annual report of abandoned property; after advertisement, and if they remain unclaimed, the amounts due escheat to the state. Upon payment to the state, the companies are discharged of any obligation, and any person subsequently

[71] Parker v. Illinois, 333 U.S. 571 (1948). Three justices dissented in the belief that "hypertechnical procedural obstructions" nullified constitutional rights.

[72] Cole v. Arkansas, 333 U.S. 196 (1948).

[73] Paterno v. Lyons, 334 U.S. 314 (1948).

[74] 333 U.S. 95 (1948).

setting up a claim must file it with the state comptroller. This law was unsuccessfully challenged by nine insurance companies not incorporated in New York in Connecticut Mutual Life Insurance Co. v. Moore.[75] A majority of six justices ruled that New York does not lack constitutional power to take over unclaimed moneys due its residents on policies, issued for delivery in the state, by life insurance corporations chartered outside the state. The business activity connected with the purchase of insurance by New York residents normally takes place in New York and therefore bears a very close relationship to that state. Justice Frankfurter dissented on the ground that the constitutional issues before the Court were hypothetical and premature. Justice Jackson dissented on the merits, asserting that the state had no jurisdiction where non-resident beneficiaries or insured persons who have become non-residents are involved, and that this decision either cuts off other states from escheating the proceeds or, in the alternative, exposes the insurance companies to liability for multiple escheats. The right of a state to escheat depends on actual or constructive dominion over the property, and New York has it not.

2. EQUAL PROTECTION OF THE LAWS

The most talked-about equal protection case of the year was Shelley v. Kraemer,[76] in which a unanimous Court ruled that it is a violation of the Fourteenth Amendment for a state court to enforce a restrictive covenant barring the sale or transfer of real estate to Negroes. "It cannot be doubted," the Chief Justice declared, "that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own, and dispose of property." While the principle is well established, ever since the Civil Rights cases,[77] that the Fourteenth Amendment does not inhibit merely private conduct, but only state action, and that therefore the restrictive agreement standing alone is not illegal, it is also a well-established rule that action by state courts and state judicial officers is state action. "It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint." This is not a case of where the state has merely abstained from action; on the contrary, the state has made available to individuals "the full coercive power of government" to deny persons the enjoyment of property rights on the grounds of race or color. The contention that the state courts also stand ready to

[75] 333 U.S. 541 (1948).

[76] 334 U.S. 1 (1948). The government entered the case as *amicus;* its brief, which is a noteworthy document, has been published. Tom C. Clark and Philip B. Perlman, *Prejudice and Property* (Washington, D. C., 1948).

[77] 109 U.S. 3 (1883).

enforce restrictive covenants against white persons was brushed aside with the observation that "equal protection of the laws is not achieved through indiscriminate imposition of inequalities." In a companion case coming up from the District of Columbia, Hurd v. Hodge,[78] it was held that a federal court may not give injunctive relief to enforce the terms of restrictive covenants. The Court avoided making a decision on the basis of the due process clause of the Fifth Amendment, preferring to rest it upon the equal right of all citizens "to inherit, purchase, lease, sell, hold, and convey real and personal property" as guaranteed by the Civil Rights Act of 1866. The scope of this statute must be considered in the light of the scope and purposes of the Fourteenth Amendment, for they were passed by the same Congress, and were expressions of the same general congressional policy. But apart from the statute, the Chief Justice declared that "it is not consistent with the public policy of the United States to permit federal courts in the nation's capital to exercise general equitable powers to compel action denied the state courts where such state action has been held to be violative of the guaranty of the equal protection of the laws."

The validity of the California Alien Land Law was before the Supreme Court once more in Oyama v. California,[79] and the justices succeeded magnificently in complicating a fairly simple and clear-cut issue. Chief Justice Vinson announced the judgment of the Court, and presented an opinion with which Justice Frankfurter agreed. Justice Black filed a concurring opinion which seemed to suit Justice Douglas, and Justice Rutledge went along with the concurring opinion of Justice Murphy. Justice Burton agreed with Justice Reed's dissent, and Justice Jackson filed his own dissenting opinion. All of this argumentation revolved around a California law which forbids aliens ineligible for American citizenship to acquire, own, occupy, lease, or transfer agricultural land, and which provides that any property acquired in violation of the statute escheats to the state. Escheat also follows from any transfer of agricultural land "with intent to prevent, evade, or avoid" escheat. This intent is presumed *prima facie* whenever an ineligible alien pays the consideration for a transfer to a citizen or eligible alien. In this case, Oyama, a Japanese citizen not eligible for naturalization, paid the purchase price for a piece of land, but title was in the name of his son Fred, a minor, and an American citizen. Six justices agreed to reverse the judgment of the state court, but they did not agree upon a rationale. Chief Justice Vinson ruled that the law deprives the son of the equal protection of California's laws and his privileges as an American citizen, since the discrimination is based solely on his parents' country of origin. Equal protection is also denied because the California law creates presumptions for him that do not apply to other

[78] 334 U.S. 24 (1948). [79] 332 U.S. 633 (1948).

minor citizens. "He was saddled with an onerous burden of proof which need not be borne by California children generally." However, the Chief Justice refused to hold that it is unconstitutional for a state to forbid the ownership of land by an ineligible alien and hence refused to re-examine the 1923 alien land law cases.[80] Justice Douglas preferred to rule on the broader ground that the law in question violates the equal protection clause of the Fourteenth Amendment, which bars states from denying to some groups, on account of color or race, rights, privileges, or opportunities given to other groups. He also thought that the law was inconsistent with the exclusive power Congress has over immigration, and with our national commitments under the United Nations charter. Justice Murphy agreed, underscoring the "uncompromising opposition of the Constitution to racism, whatever cloak or disguise it may assume." He found no merit in the various arguments often advanced to justify this discrimination, and concluded that it has no rational basis, only "racial hatred and intolerance." The three dissenting judges emphasized the fact that the presumption was rebuttable, and applied to all persons, and hence was reasonable.

A more forthright decision was made by a majority of seven justices in Takahashi v. Fish and Game Commission,[81] in which a 1943 California law prohibiting the issuance of commercial fishing licenses to ineligible aliens was held to be inconsistent with the equal protection clause, the constitutional power of Congress over immigration, and the act of May 31, 1870, which guarantees equal property rights to "all persons" within the United States. The Court refused to find here any "special public interest" or "ownership" rights of California which justify exclusion of aliens who are lawful residents from fishing in the three-mile belt of water along the shore. Justice Reed rested his dissent mainly on the argument that natural resources are in a peculiar sense the property of the "sovereign" state which it may preserve from exploitation by aliens.

In another widely-noted case, Sipuel v. Board of Regents of the University of Oklahoma,[82] a Negress who was admittedly qualified to receive professional legal education applied for admission to the School of Law of the University of Oklahoma, the only institution for legal education supported and maintained by the taxpayers of Oklahoma. The Supreme Court held that the petitioner was entitled to secure legal education afforded by a state institution, and that "the state must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group." The case was remanded to the state supreme court "for proceedings not

[80] Terrace v. Thompson, 263 U.S. 197 (1923); Porterfield v. Webb, 263 U.S. 225 (1923); Webb v. O'Brien, 263 U.S. 313 (1923); Frick v. Webb, 263 U.S. 326 (1923).

[81] 334 U.S. 410 (1948). [82] 332 U.S. 631 (1948).

inconsistent with this opinion." The state then set up a separate law school. Shortly afterwards the Court refused to interfere with the efforts of the state courts to comply with the mandate,[83] and at the end of the term no final decision of the state courts had yet matured to the point where it would be subject to federal review.

The Court was asked once more, in Moore v. New York,[84] to declare the New York special or "blue ribbon" jury unconstitutional, and, as in the Fay case,[85] five justices refused to do so. Here two Negroes were convicted of first degree murder by a "blue ribbon" jury, and it was admitted that in the jury panel of 150 names there were no Negroes. This fact, Justice Jackson declared, was not conclusive evidence of unconstitutionality, since there was no proof in the record that Negroes were intentionally and systematically excluded. Justice Murphy wrote a vigorous dissenting opinion in which he argued that any jury which is not chosen from a fair cross-section of the community is inconsistent with the democratic ideals of the jury system. The "blue ribbon" jury "contradicts the most elementary notions of equal protection." Whether any particular racial group is excluded is quite immaterial; the vice lies in the very concept of a jury consisting only of the "best" people. However, in Patton v. Mississippi,[86] a unanimous Court set aside the conviction of a Negro in Mississippi by an all-white petit jury after indictment by an all-white grand jury. Here the evidence showed that whereas over a third of the total adult population of the county was Negro, no Negro had served on a jury for thirty years or more. It is not fatal that a particular venire does not contain Negroes, but it is another matter that they have been excluded systematically for a long period of time.

3. FEDERAL-STATE RELATIONS

Intergovernmental Taxation. In the only case on this subject, West v. Oklahoma Tax Commission,[87] the Court held that Oklahoma may levy an inheritance tax on the estate of a restricted, unallotted Osage Indian, even though most of the estate was held in trust by the United States. There is no direct burden on the United States, and furthermore an inheritance

[83] Fisher v. Hurst, 333 U.S. 147 (1948). Justice Murphy thought that a hearing should be had on the issue of whether there had been compliance with the Court's mandate, and Justice Rutledge was certain that the Oklahoma courts had not followed the mandate. He wrote: "Obviously no separate law school could be established elsewhere overnight capable of giving petitioner a legal education equal to that afforded by the state's long-established and well-known state university law school." The Oklahoma district court recently held hearings on this point. See Harriet Bunn, "Ada Sipuel's Second Try," *The Nation*, Vol. 167, pp. 316–317 (Sept. 18, 1948).

[84] 333 U.S. 565 (1948).

[85] Fay v. New York, 332 U.S. 261 (1947).

[86] 332 U.S. 463 (1947).

[87] 334 U.S. 717 (1948).

tax is not levied on the property of which an estate is composed, but on the privilege of transmitting or receiving benefits. Three justices dissented without opinion. This decision is in line with the tendency of recent cases to shrink the area of tax immunity.[88]

State Police Power and Interstate Commerce. An interesting situation testing the limits of state police authority over interstate commerce was before the Court in Bob-Lo Excursion Co. v. Michigan.[89] A Detroit company maintains an amusement park on Bois Blanc Island, which lies in Canadian waters just above the mouth of the Detroit River. The place is generally called "Bob-Lo," and is Detroit's Coney Island. In connection with this amusement park, the company operates two vessels to transport passengers between the island and Detroit. The vessels engage in no other traffic. The company refused on one occasion to transport a colored girl, and was convicted in the state court of violating the Michigan Civil Rights Act, which requires all "public conveyances" to give all persons "full and equal accommodations." The Court held that although this is undoubtedly foreign commerce, clearly this commerce is of "highly local concern," since actually the island is an amusement adjunct of Detroit. Furthermore, the state regulation is not out of harmony with any existing regulation of either the United States or Canada. This local rule comes within the scope of the rule of the Cooley case,[90] which applies indiscriminately to both interstate and foreign commerce. The Hall[91] and Morgan[92] cases were explained away, largely on the theory that they did not involve "so completely and locally insulated a segment of foreign or interstate commerce," and that in neither was there a complete exclusion from passage. Justice Jackson, with whom Chief Justice Vinson agreed, dissented, arguing that the Court is committed to the rule that it will not permit local policies to burden national or foreign commerce. He complained that the Court failed "to lay down any standard by which we can judge when foreign commerce is foreign enough to become free of local regulation." In the absence of criteria, all is left "to case-by-case conjecture," and he tartly remarked: "The commerce clause was intended to promote commerce rather than litigation."

The direct sale to industrial users of natural gas piped in from another state is subject to state regulation, even though the sales are interstate

[88] The Court relied mainly upon Oklahoma Tax Commission v. United States, 319 U.S. 598 (1943), and Helvering v. Mountain Producers Corp., 303 U.S. 376 (1938).

[89] 333 U.S. 28 (1948). For an interesting comment on this case, see "State Regulation of Commerce; A Functional Test," *Columbia Law Review*, Vol. 48, pp. 773–779 (July, 1948).

[90] Cooley v. Board of Port Wardens, 12 How. 299 (1851).

[91] Hall v. De Cuir, 95 U.S. 485 (1878).

[92] Morgan v. Virginia, 328 U.S. 373 (1946).

transactions, according to the ruling in Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana.[93] The Natural Gas Act of 1938 brought under federal control only sales in interstate commerce for resale. In fact, the purpose of the act as a whole was "coöperative action between federal and state agencies." The argument that state regulation will result in obstruction to the free flow of commerce is refuted by experience, and by the fact that Congress can always correct abuses when and if they appear.

State Taxation and Interstate Commerce. The perennial question of the impact of state taxation upon interstate commerce was before the Court in several important cases. Toomer v. Witsell[94] was a suit brought by citizens of Georgia and Florida to enjoin the enforcement of several South Carolina tax laws dealing with commercial shrimp fishing in the three-mile maritime belt off the coast of the state. The shrimp are migratory, and shrimp fishing is carried on along the shores of four coastal states. The Court rejected the argument that a state has no jurisdiction over coastal waters beyond the low-water mark, and declared that such is not the teaching of the Tidelands Oil Case.[95] A poundage tax was held to be valid, the Chief Justice asserting that these fish are not imports "in a realistic sense of the word." Nor is such a tax a violation of the commerce clause, since the taxable event, the taking of the shrimp, occurs before the shrimp can be said to have entered the flow of interstate commerce. But a provision that a resident must pay a license fee of $25 for each shrimp boat, whereas a non-resident must pay a fee of $2,500, was held to be inconsistent with the comity clause. This statute plainly discriminates against non-residents; in fact, its actual effect is virtual exclusion. The argument that the state has here a special proprietary interest in *ferae naturae* was rejected as not applying in this situation because the shrimp are migratory. "The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a state have power to preserve and regulate the exploitation of an important resource. And there is no necessary conflict between that vital policy consideration and the constitutional command that the state exercise that power, like its other powers, so as not to discriminate without reason against citizens of other states." The requirement that all shrimp fishing boats licensed to trawl must dock at a South Carolina port and unload, pack, and stamp their catch with tax stamps before shipping to another state was held to be an unconstitutional burden on interstate commerce. Whatever a state may do, under the doctrine of

[93] 332 U.S. 507 (1947).

[94] 334 U.S. 385 (1948). For a recent competent survey, see Fred V. Cahill, Jr., "State Taxation of Interstate Commerce," *Oregon Law Review*, Vol. 27, pp. 97–129 (Feb., 1948).

[95] United States v. California, 332 U.S. 19 (1947).

the Geer case,[96] once it permits shipment to other states, it cannot at the same time burden such interstate commerce.

A border-line problem was before the Court in Memphis Natural Gas Co. v. Stone.[97] Here the company owns a natural gas pipe-line which runs from Louisiana through Arkansas and Mississippi to places in Tennessee. About 135 miles of the pipe-line lie in Mississippi, and at two points in that state there are compressing stations. The company does no intrastate business in Mississippi and is not qualified to do so; it has no office or agent for service of process there. It was assessed and has paid *ad valorem* taxes in Mississippi. Now the state seeks to levy in addition a "franchise" tax upon all corporations "doing business" within the state, the tax being measured by the value of the capital used, invested, or employed in the state. The state supreme court ruled that this tax is an exaction for the protection of the local activities of maintaining, keeping in repair, and otherwise manning that portion of the pipe-line which lies within the state. A majority of five justices held that it was bound by the construction of the state statute by the state court. Even if the *ad valorem* tax is for the same purpose, there is no reason why Mississippi cannot exact a different tax for the same protection. "It is as though the *ad valorem* rate had been increased." So far as the commerce clause is concerned, the Court noted that the tax was not discriminatory, that the company operated local compressor stations, that there was no possibility of multiple taxation through the imposition of the same exactions by other states, that the amount of the tax was reasonable, and that it was properly apportioned to the investment in Mississippi. Four justices thought that the state had exhausted its power to tax the receipt of local benefits when it imposed the *ad valorem* taxes, and that the only "local incident" here is the fact of interstate commerce.

A unanimous Court upheld the right of Montana to levy a flat tax of $10 per vehicle, and an additional fee calculated on the basis of "gross operating revenue," upon an interstate motor carrier doing a continuous and substantial volume of interstate business in Montana.[98] The state supreme court ruled that the phrase "gross operating revenue" means "gross revenue derived from operations in Montana." The Court held that, as so construed, the tax is valid, since it does not discriminate against interstate commerce, or apply to its gross returns, and deals exclusively with operations wholly within the state. These taxes are not vitiated by the fact that the money goes into the state's general fund, subject to appropriation for general state purposes. It is immaterial where the state puts this money, for the controlling consideration is that the

[96] Geer v. Connecticut, 161 U.S. 519 (1896).

[97] 335 U.S. 80 (1948).

[98] Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana, 332 U.S. 495 (1947).

state has a right to exact extra taxation from those who make especially arduous use of its highways.

On the other hand, by a six-to-three vote, the Court concluded that it was improper for New York to tax gross receipts derived from transportation between points within the state, but over routes that utilize, for 43 per cent of the mileage, the highways of Pennsylvania and New Jersey.[99] The taxpayer conceded that it was proper for New York to tax that portion of the gross receipts which was attributable to the mileage within the state. It is indulging in pure fiction, the Court declared, to say that this commerce was confined to New York. It held that the interstate route was not a "calculated detour" utilized for the purpose of avoiding New York taxation, and that the transactions taking place outside of New York were not trifling. If New York can tax the total receipts, then so can New Jersey and Pennsylvania, thus subjecting interstate commerce to an unfair burden. By its very nature, an unapportioned gross receipts tax makes interstate commerce bear more than a fair share of the cost of the local government whose protection it enjoys. The three dissenting justices thought that with both termini in New York, while there is interstate movement from a physical point of view, the business is local and passage through another state merely a "geographic incident." If there is any danger of multiple taxation, that is but a natural result of conducting a local business in such a manner as to use the facilities of more states than one.

4. FULL FAITH AND CREDIT

The obligation of a state to give full faith and credit to the divorce decrees of the courts of another state was further explored by the Supreme Court, but whether the law on this volatile subject is now more clear is doubtful. In Sherrer v. Sherrer,[100] the following facts were before the Court: Mr. and Mrs. Sherrer lived in Massachusetts. Mrs. Sherrer went to Florida, where the law requires residence for ninety days, and sued there for divorce, alleging in her bill of complaint that she was a *bona fide* resident of Florida. Mr. Sherrer received notice by mail, retained Florida counsel, and appeared personally. At the hearing, Mrs. Sherrer introduced evidence regarding Florida residence, and on this point counsel for her husband failed to cross-examine or introduce evidence in rebuttal. After the divorce was granted, Mr. Sherrer failed to challenge the decree by appeal to the Florida supreme court. A few days after the divorce, Mrs. Sherrer married a man she had known in Massachusetts who had come to Florida shortly after she did. Soon after their marriage they returned

[99] Central Greyhound Lines v. Mealey, 334 U.S. 653 (1948).
[100] 334 U.S. 343 (1948).

to Massachusetts. A few months later, in an effort to convey clear title to some real estate, Mr. Sherrer asked a Massachusetts probate court to declare that he was still the lawful husband of the former Mrs. Sherrer, and that she had deserted him. Under Massachusetts law, a deserted husband may convey realty free of dower rights. The probate court found that Mrs. Sherrer had not gone to Florida to make it her permanent home, but only with the intention of divorcing her husband, marrying another man, and returning to Massachusetts. These findings were upheld by the Supreme Judicial Court of Massachusetts. The Supreme Court, by a seven-to-two division, reversed the state courts, largely on the theory that the husband had had his day in court with respect to every issue involved in the litigation, including the jurisdictional issue of the wife's domicile. Due process does not demand that he should be afforded a second chance to litigate the existence of jurisdictional facts. The second Williams case [101] was distinguished on the ground that here the Florida court made a finding of the requisite jurisdictional facts in a proceeding in which the defendant appeared and participated. The Court held, further, that "the doctrine of *res judicata* must be applied to questions of jurisdiction in cases arising in state courts involving the application of the full faith and credit clause," just as it applies to comparable jurisdictional issues in the federal courts. Hence the conclusion of the Court: "The requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister state where there has been participation by the defendant in the divorce proceedings, where the defendant has been accorded full opportunity to contest the jurisdictional issues, and where the decree is not susceptible to such collateral attack in the courts of the state which rendered the decree."[102] Justice Frankfurter delivered a dissenting opinion in which Justice Murphy joined. He argued that the essence of jurisdiction, as to divorce, is domicile, and that domicile requires some sense of permanence of connection. Massachusetts has a right, he maintained, to say that those who enjoy its institutions, but are irked by its divorce laws, must either move to another state or remain and abide by Massachusetts law. The state has "the right to frustrate evasion of its policies by those of its permanent residents who leave the state to change their spouses rather than to change their homes." And he concluded: "I cannot bring myself to believe that the Full Faith and Credit Clause gave to the few states which offer bargain-counter divorces constitutional power to control the social policy governing domestic relations of the many states which do not."

[101] Williams v. North Carolina, 325 U.S. 226 (1945).

[102] Andrews v. Andrews, 188 U.S. 14 (1903), was overruled in so far as it conflicts with this decision.

The effect of the lack of real litigation of critical issues was demonstrated in the Court's decision in Estin v. Estin.[103] Mr. and Mrs. Estin were married in 1937. She brought an action for a separation in New York in 1943. The court found that her husband had deserted her, and awarded her $180 a month as permanent alimony. Then in 1944 Mr. Estin moved to Nevada, and in 1945 brought an action for a divorce. His wife was notified by constructive service, but entered no appearance. Then he received an absolute divorce. The Nevada decree made no provision for alimony, though the Nevada court had been advised of the New York decree, and Mr. Estin stopped paying alimony. Mrs. Estin then sued him in a New York court, and he appeared, setting up as a defense his Nevada decree. The New York trial court conceded that Mr. Estin was and is a *bona fide* resident of Nevada. New York's Court of Appeals ruled that the support order can survive the divorce. The Supreme Court agreed, holding that the fact that marital capacity was changed by the Nevada divorce does not mean that every other legal incidence of the marriage was necessarily affected. An absolutist view of the law is inadmissible; most legal problems, including those of full faith and credit, are questions of degree. New York is rightly concerned lest the abandoned spouse be left impoverished and perhaps become a public charge, and plainly has a legitimate interest in the problem of her livelihood and support. Nevada's view that dissolution of the marriage puts an end to the support order does not bind New York, since Mrs. Estin had not been served personally and did not appear in the proceeding. In contrast, the New York judgment is a property interest created in a proceeding in which both parties had been present. This property is an intangible, over which jurisdiction can arise only from control over the person. The state of domicile of the debtor has no power to determine the personal rights of the creditor in the intangible unless the creditor has been personally served or appears in the proceeding. In his dissenting opinion, Justice Jackson deplored the uncertainty of the divorce laws of the country, which is especially serious because our society is so "mobile and nomadic." In his view, the Court's ruling is that the Nevada decree "is half good and half bad." He did not think this divorce good, but if it was good, it was as good as one rendered in New York. Under New York law, if, after a decree of separation and alimony, the husband had obtained a New York divorce against his wife, it would have terminated her right to alimony. "If the Nevada judgment is to have *full* faith and credit, I think it must have the same effect that a similar New York decree would have."

[103] 334 U.S. 541 (1948).

AMERICAN GOVERNMENT AND POLITICS

SOME NOTES ON PARTY MEMBERSHIP IN CONGRESS, I*

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The general problem of party membership in the United States was examined to some extent in an earlier article in this REVIEW,[1] and out of that study certain implications could be noted with respect to the nature and operation of our two-party system. It was assumed, to begin with, that it is important in any party system "to bring together those persons, and only those persons, who adhere to the respective party principles," and particularly important to do that in a two-party system, "where the principles and issues are presumably sharply defined and clearly distinguishable." The extended survey of the trends in legislation and in party practice led to the conclusion that there is still need for "some better definition or understanding of what is meant by a loyal Republican and a loyal Democrat," that the lack of such definition is at least partially responsible for the loose and irresponsible nature of the party organizations, for the mass of glittering generalities in party platforms, and for the failure to offer the voter anything like clear alternative programs. "Somehow or other, it should be possible to have a party system which would make it clear whether Wendell Willkie or Senator Nye is the better Republican, whether Franklin D. Roosevelt or Senator Wheeler is the better Democrat." If Senator Vandenberg be substituted for Wendell Willkie or Senator Barkley for Franklin D. Roosevelt, the present application of the problem to the party system in Congress becomes at once evident. If it is also understood that the respective party organizations in Congress are almost completely independent of the national party organizations, and, still more, that the respective party organizations in House and Senate are almost completely independent of one another,[2] the problem of party membership, in its relation to party organization and methods in Congress, clearly deserves special attention. It is in Congress that national party platforms, declarations, and promises are presumably translated into legislation; it is therefore highly important to notice once more, and particularly in that congressional area, how the two-party system works and to what extent it is a system with or without meaning.

Although the operations of the congressional caucus in our early his-

* Further instalments of these "Notes" will appear in June and August.—*Man. Ed.*

[1] Clarence A. Berdahl, "Party Membership in the United States," in this REVIEW, Vol. 36, pp. 16–50, 241–262 (Feb., Apr., 1942).

[2] This relationship between the respective party organizations is a matter for further special study by itself.

tory, for the purpose of presidential nomination, are well known, it is not quite so clear when party organization was established and the party caucus began to function in a formal sense for the purposes of legislative organization and program. Some would date that development rather late,[3] but it seems much more probable that it was well under way for both parties and both houses by the time of the Jefferson administration.[4] Whatever the exact date for its beginning, the use of the party caucus or conference[5] obviously carries with it at once certain implications with respect to party membership— a Federalist caucus was for Federalists and for Federalists only, a Republican caucus is for Republicans and for Republicans only, a Democratic caucus for Democrats and for Democrats only. This implies, further, that there are certain criteria or rules by which a member's Federalism, Republicanism, Democracy, or other party affiliation may be determined in case of doubt.

Such rules, in any formal sense, were apparently non-existent until about 1909, and may have been supposed to be unnecessary, since members of Congress were chosen under party labels and might therefore be presumed to have had their party beliefs and attachments and activities already sufficiently passed upon and certified. Even to this day, the Republicans apparently have no formal rules with respect to party membership in either house, and such rules as they have of a permanent nature governing the party caucus provide in only the barest outline for a scheme of party organization; for the most part, they determine points of organization and procedure by *ad hoc* resolutions, which resolutions naturally reflect the practices and traditions of the past. This appears also to be the case with the Senate Democrats, though the House Democrats, on the other hand, have long recognized the desirability of a somewhat more formal

[3] "Although some concerted action must always have been necessary to produce a majority result, caucuses as we know them did not appear until towards the middle of the century." Follett, *The Speaker of the House of Representatives* (1909), p. 40; cf. Willoughby, *Principles of Legislative Organization and Administration* (1934), pp. 546–547.

[4] "By 1797 senators [presumably Federalist senators] were arranging the membership of committees in party conferences secretly held." Luce, *Legislative Procedure*, p. 508. "The Democrats [Republicans] in Congress are adopting of late quite an economical plan of making laws . . . . All business is to be settled in caucuses before it comes before the House; and the arguments or motives be given in newspapers afterwards. The federal members are to be treated as nullities." *Washington Federalist*, Feb. 6, 1802, quoted in Luce, p. 508. Cf. Harlow, *The History of Legislative Methods in the Period before 1825*, pp. 143–144. The writer has not, however, been able to find any record of actual caucuses before the 26th Congress (1839–1841). See compilation of House party caucus chairmen, in *Cong. Record*, Vol. 87, pp. A383–A384 (77 Cong., 1 Sess.).

[5] The distinction between caucus and conference has reference primarily to the binding nature of decisions, and is a matter deserving some examination, but not for the purposes of these notes.

organization, and in 1909 adopted a set of caucus rules,[6] which have since remained virtually unchanged and which included (and still include) the following with respect to membership: "1. All Democratic members of the House of Representatives shall be prima facie members of the Democratic caucus. 2. Any member of the Democratic caucus of the House of Representatives failing to abide by the rules governing the same shall thereby automatically cease to be a member of the caucus."

With or without rules, however, cases arose of members in either house who wore no regular party label at all, members who wore the party label but wore it very lightly, members who wore more than one party label at the same time, members who changed their party label during the course of their service in Congress, members who bolted and even actively opposed the decisions of the party whose label they wore. There have been cases, in other words, of members whose formal party affiliation was in doubt and had somehow to be determined; there have been many more cases of members whose *bona fide* adherence to and loyal support of the party was subject to serious challenge and had somehow to be determined. Such party affiliation has had to be determined, primarily because of the custom of apportioning committee assignments among the different parties roughly in accordance with party strength, followed by the problem of the actual assignments to the various committees within that agreed proportion. It goes without saying that only Republicans can reasonably expect assignment within the Republican quota, and Democrats within the Democratic quota.[6a] The problem is to find who are the Republicans or the Democrats, and in case of doubt, what are the respective criteria of Republicanism and of Democracy.

I. REPUBLICAN PARTY

In general, the Republicans (and their predecessors) seem to have had the greater difficulty. The touchy slavery question brought on, as one might expect, an early test of party loyalty. In 1849, a Whig House caucus, composed of "all Whigs proper, or Whigs *quasi*, then in the city," met for the purpose of organizing the 31st Congress, and, in an atmosphere from which "a calm, collected, and unanimous expression of feeling was expected, as from a band of brothers assembling for a common purpose, to present a common front against a common enemy." Following the election of caucus officers, however, Robert Toombs of Georgia, that

[6] Report of Democratic House Caucus, Mar. 22, 1909, in *Washington Post*, Mar. 23, 1909, p. 1, c. 7; the caucus rules are reprinted in Mathews and Berdahl, *Documents and Readings in American Government* (rev. ed., 1940), pp. 433–434. The circumstances which brought about this action are related in a later instalment of this article.

[6a] See discussion of committee assignments as the "Party Rawhide," in Norris, *Fighting Liberal*, pp. 132–134.

Southern firebrand but then a good Whig, exploded the caucus calm by introducing this resolution: "Resolved, That Congress ought not to pass any law prohibiting slavery in the territories of California or New Mexico, nor any law abolishing slavery in the District of Columbia." There was some vigorous debate on the merits of the resolution, but the general Whig position was probably best stated by Duer (N.Y.), who said that it was "well known that the Whigs differed on the subject of slavery, as they did on many other things as to which they had not agreed to act together, and as a national party they did not expect to coerce individuals to think alike on such exciting questions." The Toombs effort to commit the Whig party to a definite position was therefore voted neither up nor down, but was postponed by an overwhelming majority, with only eight votes in opposition; whereupon Toombs and five others left the caucus and apparently even bolted the caucus nominee for speaker (Robert G. Winthrop). There is no record of any Whig punishment of Toombs and his followers for this disruption of the party calm, but it seems altogether probable that the occasion marked the end of Toombs' association with the party.[7]

The impeachment of President Johnson was a question on which Republican doctrine and Republican loyalty were tested. Thus, in 1866, at a Republican joint House and Senate caucus, Henry J. Raymond was attacked as a Johnson man by several members, including Thaddeus Stevens, who said that he did not believe in the idea of Johnson Republicans and could not consent to let Johnson men into a Republican caucus. "But," he said, "if I had good, reliable evidence of the heartfelt repentance of Mr. Raymond, I would take him in on probation." Raymond protested that, although he had participated in the Philadelphia movement,[7a] he had dis-

[7] These Whig bolters voted for Meredith P. Gentry (Tenn.). It was this bolt which in part brought about the long deadlock for speaker finally resolved by the House decision to elect by plurality instead of by majority, Howell Cobb (Ga.), the Democratic nominee, being thus chosen. For an account of the Whig caucus of Dec. 1, 1849, see *National Intelligencer*, Dec. 6, 1849, p. 3, cc. 3–4. It was a year later, on Dec. 11, 1850, that Toombs announced to a Georgia convention, "I am a Whig no more forever," with the clear implication in his address that he had abandoned that party as a result of the above events; he thereupon helped to organize the Constitutional Union party in Georgia, and was elected to the Senate in 1851 under that party designation for the term beginning in 1853; meanwhile he served another term in the House (1851–53), apparently still as a Whig, but on July 3, 1852, joined eight other members in signing an "Address of Certain Whig Representatives in Congress against the Nomination of Gen. Scott," and when Scott was nominated, supported the Democratic nominee, Franklin Pierce. Brewton, *The Son of Thunder; An Epic of the South* (1936), pp. 202–209; McCluskey, *The Political Text-Book, or Encyclopedia* (1857), pp. 605–606.

[7a] The Philadelphia movement, otherwise referred to as the "Arm-in-Arm Convention," was an attempt to unite moderates in support of President Johnson's reconstruction policy. Good accounts are to be found in Randall, *The Civil War and*

covered his mistake and quit, and was now and always had been a Union man and desired to continue in the Union party. His declaration met with considerable laughter and some cries of "Put him out"; but in the end a motion by Mr. Schofield was carried by a small majority, which left the matter to Raymond's own conscience—"if he honestly believed himself to be a member of that [Union or Republican] party, he could remain; if not, he could withdraw." A further attempt to throw Raymond out was defeated by the close vote of 36-38, and altogether the proceedings were a severe lesson to him and others not to play fast and loose with Johnsonism.[8]

On a later occasion (May 28, 1868), a Republican Senate caucus, called to select a Senate secretary, refused to consider that matter and adjourned to a later date, because of the presence of four Republican senators (Trumbull, Van Winkle, Ross, and Fowler) who had voted to acquit President Johnson of the impeachment charges. "The majority of Republican senators decline to consult with the anti-impeachment senators on strictly party questions." At the later caucus, these Republicans apparently removed the sergeant-at-arms because he was "Trumbull's man," and sought to replace him with one John W. Jones, "partly because of his faithfulness to Mr. Forney [the retiring secretary] and partly for his striking resemblance to the late lamented Daniel Webster."[9]

The Liberal Republican movement raised the question of the status within the Republican party of those Republican members of Congress who had participated in that movement. Francis P. Blair, "the Missouri Bolter," was not formally read out of the party, but voluntarily withdrew from a Republican House caucus on March 14, 1871, explaining that "he had heard that his presence was not desired by many of the Republicans present." It is said that "no tears were shed at his departure."[10] Similarly, a move was begun by Senate Republicans, immediately following the 1870 election, to oust Senator Schurz from his committee assignments and exclude him from the caucus, this taking the form of the appointment of a caucus committee "to report at a future meeting on the subject of revising the Senate committees."[11] When the report of this committee was considered by the caucus on December 8,

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Reconstruction, pp. 746–748, and Beale, *The Critical Year; A Study of Andrew Johnson and Reconstruction*, Chap. 4, esp. pp. 123–128.

[8] Caucus Proceedings, Dec. 5, 1866, in *N. Y. Tribune*, Dec. 6, 1866, p. 1, cc. 2–3. At an earlier joint caucus, held July 11, 1866, a resolution was almost unanimously adopted denouncing the Philadelphia convention. See Raymond's own account (contributed by John A. Krout), in *Amer. Hist. Rev.*, Vol. 33, pp. 837–839 (July, 1928).

[9] *N. Y. Tribune*, May 29, 1868, p. 1, c. 2; June 2, 1868, p. 1, cc. 3–4. Apparently George C. Gorham (Calif.) was elected as sergeant-at-arms. *Biographical Congressional Directory* (1927), p. 293.

[10] *N. Y. Tribune*, Mar. 15, 1871, p. 1, c. 5.

[11] *Ibid.*, Nov. 12, 1870, p. 1, c. 6; Dec. 7, 1870, p. 1, c. 6.

1870, Schurz was left on the Committee on Foreign Relations, but was denied a chairmanship (of the Committee on Retrenchment) to which he was entitled under the usual rule of seniority.[12]

Following the election of 1872, the Republican Senate caucus, on December 5, 1872, upheld its Committee on Committees in refusing to give any committee assignments at all to eight Liberal Republican senators (Trumbull, Sumner, Schurz, Tipton, Rice, Fenton, West, and Hamilton), and in that way read them out of the party. In this case the Democrats did the unusually generous thing of offering most of these men committee places from their own meager allotment as the minority party, even at the cost of sacrificing some regular Democrats. In that way, for example, Schurz was given the only Democratic (and, of course, the last) place on the Committee on Foreign Relations, and Trumbull a similar place on Privileges and Elections; while Tipton, Rice, and Hamilton were given the last places on committees (Public Lands, Indian Affairs, and Pensions, respectively), with a regular Democrat in the place just ahead.[13] This was done in spite of emphatic declarations by these Liberal Republican senators that they would not consider themselves Democrats and would not be bound by the caucus of either party, but would act independently and in accordance with their own best judgment on every question.[14]

The independent movement of the 1880's and 1890's, which brought into Congress a miscellaneous group of Greenbackers, Farmers' Alliance men, Populists, and just plain Independents, provided many problems for both of the older parties, but again particularly for the Republicans, who during most of the time were nominally in control, but found their control threatened by these men of loose party conscience. The House elected in 1880, for example, was exceedingly close (147 Republicans, 136 Democrats, 9 Greenbackers, 1 Independent), with five of the nine Greenbackers classified as Republicans, only three of them, however, willing to participate in the Republican caucus on House organization.[15] In 1887, when the Republicans were the minority, not one of the six Independents, including two who were "catalogued as Republicans," attended the Republican House caucus.[16] Whether these Independents would have been welcomed

[12] *Ibid.*, Dec. 9, 1870, p. 1, c. 3. The matter of committee assignments was on this occasion complicated by Sumner's refusal, as chairman of the Committee on Foreign Relations, to accept Conkling as a colleague on that committee, and the consequent necessity of some reassignments.

[13] *N. Y. Tribune*, Dec. 6, 1872, p. 1, c. 1; Dec. 7, 1872, p. 1, c. 2.

[14] See the correspondence between Senator Schurz and Senator Thurman, chairman of the Democratic caucus, dated Dec. 6, 1872. *N. Y. Tribune*, Dec. 7, 1872, p. 1, c. 1.

[15] *Washington Star*, Oct. 31, 1881, p. 1, c. 4.

[16] *Washington Post*, Dec. 4, 1887, p. 2, c. 5. The six were Anderson (Ia.), Smith (Wis.), Nichols (N.C.), Hopkins (Va.), Brower (N.C.), J. R. Brown (Va.).

had they attended, is not made clear, although it seems quite probable that they were, in fact, being cultivated.

Some difficulty arose over the first two Populist senators, Peffer of Kansas and Kyle of South Dakota. It was reported that the party leaders had agreed to parcel out these two men, Peffer to be given committee assignments by the Republicans and Kyle by the Democrats, the idea being "to swallow up the two senators, so to speak, in order that their individuality as Alliance men may be reduced to a minimum."[17] Peffer was, in fact, assigned by the Republican caucus to the last Republican place on four committees (Claims, Census, Improvement of the Mississippi River, and Railroads), in spite of his own letter to the chairman of the Democratic caucus (Senator Cockrell of Missouri), in which, without committing himself to act with that party, he requested "considerate treatment, particularly in the matter of committee assignments."[18] Kyle had chosen his Senate seat on the Democratic side, and had given other indications of his intention to affiliate with the Democrats, but apparently sought committee assignments from both parties. His colleague, Senator Pettigrew (then an ardent Republican, later himself in turn a Silver Republican, Populist, and Democrat), had objected strongly to recognizing Kyle as an Alliance man (Populist), but had suggested that Kyle choose his party, and had offered, if the Republican party were chosen and there were not enough committee posts to go around, to resign some of his own in Kyle's favor. At any rate, the Republicans were apparently considering Kyle's claims when they learned of his double-dealing, promptly dropped him from their lists, and even reported the matter to the chairman of the Democratic caucus. The assignments of Kyle, already made by the Democrats to their last places on two committees (Education and Patents) were, however, allowed to stand.[19] Later (in 1893), both Peffer and Kyle were given committee chairmanships by the Democratic Senate caucus, Kyle having regularly associated with the Democrats and Peffer having announced that he would vote with the Democrats on matters of organization.[20]

Even Stewart of Nevada, formerly a rabid Republican, but who had got out of tune with the party on the money question and in 1892 had gone over to the Populists, was at that time allowed by the Senate Democrats, now in the majority, to retain his chairmanship of the Committee on Mines. This posed a nice problem for the Republicans, some of whom,

[17] *Ibid.*, Dec. 15, 1891, p. 1, cc. 3–4.

[18] *Ibid.*, Dec. 10, 1891, p. 1, c. 5; Dec. 15, 1891, p. 1, cc. 3–4.

[19] Kyle was actually assigned by the Democrats to two additional committees (Arid Lands and American University), but these assignments were not confirmed by the Senate. For an account of the Kyle episode, see *Washington Post*, Dec. 16, 1891, p. 1, c. 5.

[20] *Washington Post*, Mar. 15, 1893, p. 1, cc. 4–5.

such as Dubois (Idaho), Gallinger (New Hampshire), and Hoar (Massachusetts), urged Stewart's displacement from his other good Republican post on the Committee on Appropriations in favor of "a senator of whose Republicanism there can be no manner of doubt;" while others, such as Teller (Colorado), Wolcott (Colorado), Stanford (California), and Stewart's colleague, John P. Jones, strongly urged his retention, chiefly on the ground that it was unwise to antagonize the Populists. After a long debate, and by a vote of 18–10, Stewart was displaced in favor of Teller.[21]

Following the Republican convention of 1896, with its dramatic bolt of the convention, platform, and ticket by several Silver senators and representatives, led by Senator Teller, the Republican Senate leaders finally decided, nevertheless, to send the bolters notices of the caucus scheduled for December 8, 1896, thus virtually inviting them to continue their association with the Republican party. Those Silver Republicans who were silver in principle but had not opposed the election of McKinley[22] were present at that caucus, but those who had bolted McKinley stayed away and probably saved the party considerable embarrassment.[23]

In 1901, Senator Wellington (Maryland), who had been elected to the Senate as a Republican, but who had supported Bryan in 1900 on the issue of imperialism, and who apparently had said some unkind things about McKinley at the time of the assassination, was excluded from the Republican Senate caucus, but later was given Republican committee assignments. The explanation, which seemed to suggest a kind of associate membership or a probationary status for Senator Wellington, was to this effect: "It does not necessarily follow that Senator Wellington will fully renew his allegiance to the Republican party or participate in the caucuses. It is customary to recognize the request of a senator for committee assignments, the supposition being that he will then act with the party."[24]

In 1906, Peter A. Porter (New York), nominated for the House by Independent Republicans and endorsed by the Democrats and the Independence League, defeated the regular and now veteran Republican congressman, James W. Wadsworth. Porter thereupon sought admission to the House Republican caucus, but was turned down by the chairman

[21] *Washington Post*, Mar. 15, 1893, p. 1, c. 4; Mar. 16, 1893, p. 2, cc. 6–7. It is interesting to note that of these Republican senators, Dubois and Teller were soon to leave the party, and for the same reasons as Stewart.

[22] Carter (Mont.), Wolcott (Colo.), Mitchell (Ore.), Shoup (Ida.), Cameron (Pa.), Pritchard (N.C.), Perkins (Calif.), Clark (Wyo.).

[23] These were Dubois (Ida.), who also resigned as secretary of the caucus; Teller (Colo.), Cannon (Utah), Mantle (Mont.), Pettigrew (S.D.), and Squire (Wash.). *N. Y. World*, Dec. 8, 9, 1896. Apparently Teller and Dubois, who continued in the Senate for some time, did not formally participate in Democratic caucuses until 1901. *Ibid.*, Dec. 11, 1901.

[24] *N. Y. World*, Dec. 4, 5, 14, 1901.

of the caucus, Hepburn of Iowa, who said: "I had before me the ballot in the election. I understand a Republican to be a believer in the principles of the Republican party and a supporter of the Republican organization. . . . We can't pay premium to disorganizers. He may vote with the Republicans if he cares to, but that is another matter." Porter then appealed to the caucus itself, writing a formal letter in which he strongly asserted his right to sit as a Republican. "I have always been and am a Republican; was nominated for Congress primarily by petition; was indorsed by the Democratic convention, although one-third of that convention declined therein to vote for me on the ground that I was a Republican. In my judgment, I received more Republican votes in my district than the gentleman nominated in the so-called Republican caucus [Mr. Wadsworth]." Porter even indicated that, whatever the decision of the caucus, he would support Republican policies, "as a duty to my constituents who voted for me, knowing I was a Republican (for I so stated in every speech I made during the campaign). . . . " The House Republicans, however, in caucus on November 30, 1907, rejected Porter's appeal with only one dissenting vote, and he remained, for his one term, a congressman without a party.[25]

The progressive movement, which took on tangible form with the Taft administration, quickly produced cleavages within the Republican party which were manifest on numerous occasions and which frequently raised questions of party loyalty and allegiance. In connection with the Pinchot-Ballinger controversy and the demands in Congress for an investigation, the split between the "regular" and "insurgent" Republicans was such as to require intervention by the President and considerable negotiation to maintain even formal unity in the House party organization, and brought forth, on January 14, 1910, the following White House statement: "It has been agreed between the regular Republicans and the so-called insurgents, represented by Mr. Dwight [of New York, the Republican whip] on the one hand and Mr. Hayes [of California] on the other, after conferences with the President, that a caucus should be held to pass upon the question of the committee in the Interior Department investigation,with the assurance that the insurgents, if they came into the caucus, would be treated fairly, and that a committee of acknowledged impartiality would be appointed. A further agreement was foreshadowed that caucuses should be held from time to time, to which all elected as Republicans should be invited, to take up the various measures recommended by the Administration as performances of party pledges, the subject of each caucus to be announced in advance." This statement was confirmed by the leaders of both factions, Mr. Dwight giving positive assurance that the regular Republicans were prepared to go into caucus upon any proposition and abide

[25] *Ibid.*, Dec. 1, 1907, pp. 1, 16. It was reported also that Porter had first unsuccessfully sought admission to the Democratic caucus. *Ibid.*, Dec. 2, 1907.

by the result, and inquiring whether the insurgents were ready to do the same; while Mr. Hayes, for the insurgents, pledged them to attend a caucus on the immediate matter in controversy (the Pinchot-Ballinger question), but refused to make any commitment on future caucuses, saying, "I had no authority from my associates to enter into that question."[26]

This factional split within the Republican party and the resulting problems with respect to party loyalty and discipline were still more evident in the Senate. On April 3, 1911, the evening before the Republican Senate caucus was held to organize the 62nd Congress, twelve senators met in secret conference,[27] declared themselves "Progressive Republicans" entitled to separate recognition on the basis of their strength as one-fourth of the Republicans in the Senate, and appointed a committee to present their demands to the regular Republicans. In the caucus on April 4, the regulars yielded to these demands, the progressives being allowed four out of eleven members on the Committee on Committees, and two out of eleven on the Steering Committee, those progressive members in each case being named by the progressives themselves in separate conference.[28]

In the Committee on Committees, having as its function the actual assignments to Senate committees, LaFollette pressed a formal resolution "that the insurgent wing be given one in every four Republican committee assignments, and that the insurgents, acting as a body, be given the right to designate what particular members of their group should be assigned and upon what committee he should be placed." The regulars tried to persuade the progressives to follow the usual custom of indicating individual preferences for committee assignments, and stated that they would give full and fair consideration to such preferences; but they refused to deal with the progressives as a body and thus recognize the existence of an organized faction within the party; and the LaFollette resolution was defeated—first in its original form, and then as modified to omit the express separate recognition, but retaining progressive control of progressive assignments—by a straight factional vote of 7 to 4. In the end, the progressives, although not given every post asked for, were accorded good

[26] *N. Y. World*, Jan. 15, 1910.

[27] These were: Borah (Ida.), Bourne (Ore.), Bristow (Kans.), Brown (Neb.), Clapp (Minn.), Crawford (S.D.), Cummins (Ia.), Dixon (Mont.), Gronna (N.D.), LaFollette (Wis.), Poindexter (Wash.), Works (Calif.).

[28] Those named were: *Committee on Committees* (progressives): LaFollette (Wis.), Bourne (Ore.), Cummins (Ia.), Bristow (Kans.); (regulars) Gallinger (N.H.), Lodge (Mass.), Warren (Wyo.) Penrose (Pa.), Heyburn (Ida.), Smoot (Utah), Bradley (Ky.); *Steering Committee* (progressives): Borah (Ida.) and Brown (Neb.); (regulars) Cullom (Ill.), Gallinger (N.H.), Clark (Wyo.), Nelson (Minn.), Gamble (S.D.), Brandegee (Conn.), Smith (Mich.), Briggs (N.J.), Jones (Wash.). *Washington Post*, Apr. 5, 1911, p. 1, cc. 3–4; Apr. 6, 1911, p. 1, c. 6.

committee assignments, though without securing formal recognition as a distinct faction.[29]

For some years following the election of 1912, both Senate and House Republicans had less difficulty with the progressive or insurgent group, probably in part because some of the most insistent progressives had bolted to Theodore Roosevelt's Progressive party and were temporarily not wearing the Republican label, in part because the Republicans were now in the minority and it was not quite so important to hold strategic positions within the party organization. The Senate caucus, held on March 5, 1913, elected Gallinger (New Hampshire), a "rampant standpatter," as chairman, and Kenyon (Iowa), "an advanced progressive," as secretary; no progressive senator who cared to attend was excluded from the caucus or from committee assignments, but the progressive representation on the Committee on Committees was reduced from four out of eleven to two; LaFollette, the original and most vociferous progressive of them all, but, in view of his bitterness against Theodore Roosevelt no bolter in 1912, not only attended the Republican caucus, but was, with Crawford (South Dakota), made a member of the Committee on Committees, and was, in fact, cultivated by the regulars.[30] In the House, progressives attended the Republican caucus, and supported its decision in respect to House and party organization, but indicated that they would not feel bound by caucus action in respect to legislation.[31]

Ten years later, the progressive movement having again become strong, and having again made important inroads upon the Republican party in particular, Republican party differences once more became acute and led to renewed consideration of the appropriate place of the progressives within the Republican party organization. In the Senate, these differences were noted by Senator Jones (Washington), the Republican whip, who, in November, 1923, shortly before the convening of the 68th Congress, issued a formal statement urging the Republicans to get together,

[29] The principal committee assignments sought by the progressives and refused them were: LaFollette to Interstate Commerce, Cummins (later Bristow) to Finance, and Bristow to Foreign Relations. In the first two cases, the progressives carried the fight into caucus, and were defeated there also. *Washington Post*, Apr. 22, 1911, p. 4, c. 1; Apr. 23, 1911, p. 4, c. 5; Apr. 26, 1911, p. 1, cc. 3–4; Apr. 27, 1911, p. 4, cc. 1–2.

[30] "Republican regulars just now are showing the most tender solicitude for this original rock-ribbed Republican progressive (LaFollette), and want to keep him on the committee [Finance], where LaFollette was at the bottom of the list. If the Democrats will not concede another minority member, some one will have to leave Finance to make way for LaFollette if he is to stay. If that is the only alternative, and the Republicans feel that they must hold fast to the Wisconsin senator, it will be Senator Clark of Wyoming who must give way." *Washington Post*, Mar. 7, 1913, p. 4, c. 1; Mar. 8, 1913, p. 4, c. 1; Mar. 9, 1913, p. 6, c. 1.

[31] *N. Y. World*, Apr. 6, 1913.

apparently being willing himself to accept any member's designation of himself as a Republican. "What we need," he said, "is conferences, not caucuses, attended by all who claim to be Republican, at which views and opinions will be frankly exchanged and an earnest effort made to find a common basis of agreement. We can learn much from each other, and we can afford to make concessions to each other on details and policies, if not on principles, for the good of the country and the party."[32]

In spite of this advice, half a dozen Republicans,[33] being unable to persuade the regulars to yield to their demand for greater recognition, absented themselves from the Republican caucus held on December 1, 1923, to organize the Senate for the 68th Congress, and launched a fight on Cummins (ten years earlier one of their number, but now considered a conservative) as both president pro tem. and chairman of the Committee on Interstate Commerce. In making this fight, the progressives first voted for one of their own number (LaFollette) for the committee chairmanship, which was in itself a considerable revolt against party tradition and discipline, since Cummins was entitled to the chairmanship under the rule of seniority and had been selected by the party Committee on Committees and confirmed by the party caucus; but later these progressives even voted for and secured the election of "Cotton Ed" Smith (South Carolina), who thus became the one Democrat to hold an important committee chairmanship in a Republican Senate.[34]

In the House, the Republican situation at this time was, in anticipation, even more difficult and dramatic. About 60 progressives, with the solid Wisconsin group of ten alone sufficient to hold the balance of power,[35] met in formal caucus on November 30, 1923, under the chairmanship of Representative Nelson (Wisconsin) who, in a stirring address, intimated that the concerted progressive effort should be primarily to liberalize the rules and to open up the committees, reminded the progressives of their unusual opportunity and also of what they might suffer. "We are not going to walk on a pathway of roses," he said. "We are going to be sifted as wheat. We are going to be tried as gold in a furnace. All real progres-

[32] *Washington Post*, Nov. 28, 1923, p. 1, c. 5.

[33] These were Borah (Ida.), Brookhart (Ia.), Frazier (N.D.), Ladd (N.D.), LaFollette (Wis.), and Norris (Neb.). *Washington Post*, Dec. 2, 1923, p. 1, c. 1. Since the Republicans had a total of 51, these six senators held the balance of power in the Senate; they could also count on the support of Shipstead and Magnus Johnson, the Farmer-Labor senators from Minnesota.

[34] This was accomplished after 31 ballots over the period Dec. 10, 1923–Jan. 9, 1924. *Cong. Record*, Vol. 65, pp. 155–157, 158–160, 233–234, 249–251, 327–328, 399–401, 427–431, 508–509, 626, 737, 747 (68 Cong., 1 Sess.).

[35] The House was composed of 225 Republicans, 207 Democrats, and 3 Independents; the Wisconsin delegation consisted of ten Republicans and one Socialist (Victor Berger).

sives will be put to the acid test. . . . "[36] Apparently not many of the progressives were ready at that time to undergo this "acid test," for at the party caucus the regulars had things completely their own way[37] and later broke the opposition, which was carried to the floor of the House,[37a] by conceding a place on the Rules Committee to Nelson himself, and by permitting the discharge rule to be invoked on petition of 150 members instead of by a full majority of the House.[38] Although badly beaten, the progressives in neither house were at that time punished for their irregularity, nor was their standing in the party questioned.

DID HUGHES SNUB JOHNSON?—AN INSIDE STORY

HOW AND WHY CHARLES E. HUGHES LOST CALIFORNIA AND THE PRESIDENCY IN 1916

FREDERICK M. DAVENPORT*

Chairman, Federal Personnel Council, United States Government

Some day, if and when the files of recollection left by Charles E. Hughes are open to research and discussion, it may be entirely clear how it happened. I am quite sure such memoirs exist, for only a year or two ago Mr. Hughes told me at his home in Washington that he would never write an

[36] *Washington Post*, Dec. 1, 1923, p. 1, c. 8.

[37] For Speaker, Gillett (Mass.), the regular candidate, received 190 votes; Cooper (Wis.), the progressive candidate, 15; Madden (Ill.), 9; and Little (Kan.), 1. Longworth (O.) was chosen majority floor leader with almost no opposition.

[37a] Cooper was formally nominated in the House for speaker against Gillett, the regular caucus nominee, and received 17 votes (15 Republican) on the first eight ballots, nine from Wisconsin (Cooper himself voting "present"), four from Minnesota (Clague, Davis, Keller, Knutson), one from North Dakota (Sinclair), one from New York (LaGuardia), and the two Farmer-Labor members from Minnesota (Kvale and Wefald). In addition, five other Republicans (King, Michaelson, and Reid, of Illinois; James and Woodruff, of Michigan) also bolted the caucus nominee on the first eight ballots, voting instead for Madden (Ill.); and two of these (James and Reid) so voted on the ninth and last ballot, when the insurgents went over *en bloc* to Gillett.

[38] *Washington Post*, Dec. 2, 1923, p. 1, c. 1; Dec. 16, 1923, p. 3, c. 1; Jan. 13, 1924, p. 4, c. 4. The fight over the rules was closely related to the speakership, and Gillett's election was secured only after an agreement to permit modification of the rules was read to the House, entered into between the progressive group represented by Nelson (Wis.), Woodruff (Mich.), and LaGuardia (N.Y.), on the one hand, and Majority Leader Longworth, on the other. *Cong. Record*, vol. 65, pp. 8–15 (68 Cong., 1 Sess., Dec. 3, 4, 5, 1923); text of agreement at p. 14.

* Mr. Davenport, "for forty years a Theodore Roosevelt Republican," was for eight years a member of the New York State senate and for a like period a member of the national House of Representatives, and during the past ten years has been chairman of the Federal Personnel Council.—*Man. Ed.*

autobiography, but intended to leave a record of his public activities in such form that it would be available to those who could make good use of it in the future. We had a good laugh that day over the disparity of the actual facts and the public understanding about them in some instances with which we were both familiar, as far back as the very controversial days of the Hughes governorship of New York State.

I think I should say a word about my competence to write about the critical California epsiode particularly. In the second term of Mr. Hughes' governorship, I was in the New York State senate, and was one of seven men in that branch from the year 1909 to 1911 who particularly aided him in his forward-looking battles with the William Barnes machine for better control of party organization, and other issues involving the general public welfare.

As a result of the intimate contacts of that period, I was in reasonably friendly contact with the "Governor," as some of us always called him, to the end of his wonderful life. So when he ran for the presidency in 1916, there were a few of us whom he liked to have near him, not in an official or authoritative way, but to talk over each day's happenings and help him in any manner that we could to make the vast detailed burden of a presidential candidate en route somewhat lighter than it otherwise might have been.

And so it happened, I am sure at Mr. Hughes' instance, that just before the fateful trip to the Pacific Coast I received the following note from the Republican National Chairman:

Republican National Committee
511 Fifth Avenue, New York
William R. Willcox, Chairman

July 28, 1916

To whom it may concern:

This letter will introduce Hon. Frederick M. Davenport of this state, who is traveling with the party accompanying Governor Hughes on his Western itinerary.

Mr. Davenport represents me and I will be greatly obliged to any person to whom he presents this letter to give him such details or information as he would give to me if I were present.

Appreciating the coöperation of anyone who receives this letter,

Very truly yours,
(s) W. R. Willcox

In the course of the journey across the continent, the campaign group came to St. Paul, and were resting and lunching at one of the hotels. Things were unusually quiet, and I was walking alone through one of the corridors when some distance ahead of me I saw the profile of Mr. Hughes dart out of one of the doors, and then retreat again. He evidently saw me for in an instant he was back and called to me to come into his room. He was visibly stirred by a problem. He pointed to a pretty deep stack of long telegrams—telegrams as long as extended letters—and said, "Davenport,

I wish you would go over those wires, and tell me what you think should be done. I can't find my secretary, my manager, my publicity man, or anybody on the staff."

It took some time to go over that telegraphic mass. There was no doubt about the import of it. It was the first overt signal to Hughes of what he was to meet in California, namely, the vast and bitter controversy between the Hiram Johnson Progressives and the Crocker-Keesling Republican machine of the state, in a life and death struggle for control.

The particular sheaf of telegrams which Mr. Hughes asked me to read were all about who was to preside at San Francisco, where the main meeting in California was to be held. The Johnson manager, Chester Rowell, and his group of Progressive leaders had one view, and William H. Crocker, of the Southern Pacific Railway and the ruling machine politicos, had another. Hiram Johnson was governor of the state, had been for several terms, and at the moment was campaigning throughout the commonwealth for the post of United States senator, to which he was later elected by a very large majority. It seemed to Rowell and other Johnson friends very natural that the governor of the state should preside at the chief Hughes meeting in the central city. Johnson said later he knew nothing about their request, and would have sought to prevent it if he had known. Mr. Hughes' manager, Republican National Chairman William R. Willcox, did not wish to interfere, but made it very clear through a wire, of which I have a copy, that he thought the natural thing was to have so distinguished a governor preside at the principal meeting.

The foes of Johnson opposed him as chairman of the San Francisco meeting on the alleged ground that Johnson was a candidate for a new office, the United States senatorship, that the primaries were only two weeks away, and that it was not fair to give one Republican candidate for the Senate the advantage of the prominence at the San Francisco meeting. Johnson was running on both the Republican and Progressive tickets. There was another candidate running against him on the Republican ticket, put forward by the Crocker machine. The struggle, however, was not really over a detail of that kind. It was a part of the deep cleavage on economic and political lines, involving the whole life of the state at the time. It was part of a fight to the death between progress and standpatism in a powerful, expanding commonwealth.

When I had gone through the telegraphic sheaf, Mr. Hughes said, "What's to be done about it?" I told him that I thought that it was a plain question of whether the existing governor of the state should preside at San Francisco, in a national phase of the campaign, where the Crocker side and Johnson side were both proclaiming deep interest in the election of Hughes to the presidency. I could see no reason in the world why all spite and narrowness of view should not be set aside and the biggest thing for the party and the country accomplished. The particular

controversy was not yet out in its highly public phase, and I suggested to Mr. Hughes that he request National Chairman Willcox to bring together Rowell for the Johnson side and Crocker for the Johnson foes in the city of Portland, Oregon, to which we were going before we proceeded to California, to hear their respective stories and tell them what he thought should be done and what he expected would be done in view of the serious matter which had been made of it.

Mr. Hughes accepted the suggestion, and wired Chairman Willcox to ask the two prominent protagonists to meet him in Portland to go over that and some other matters. There is plenty of documentary evidence of this. I have in my files full copies of the telegraphic correspondence of Chairman Willcox with the California leaders on these and other matters. On August 11, 1916, from New York, Chairman Willcox wired to William H. Crocker: "Have telegram from manager of the Hughes train which suggests that both you and Rowell meet the train in Portland on Wednesday, August sixteenth, and travel with Governor Hughes to San Francisco and *to withhold final arrangements about chairman* until then unless you have come to an agreement."

Rowell at once wired that he would be there. On the same day, Crocker wired as follows: "Replying to your telegram today, all arrangements for California have been completed."

Willcox, the Republican National Chairman, and Hughes, the presidential candidate, had previously indicated to California National Committeeman Crocker how they felt about the controversy, then developing *sub rosa*. Willcox, under date of the thirtieth of July, wired Crocker: "It does not seem to me that the National Committee or candidate should be required to decide a matter of this kind. . . . I might personally say, but not officially, that I think there is some force in the governor of the State, supporting the Presidential candidate, having the privilege of presiding at one of the meetings." This telegram was sent at the instance of Governor Hughes himself, as I learned at the time.

As the violent battle of telegrams continued, it became evident that the issue was not only closely joined, but bitter and dangerous in the extreme. Therefore, the conference with Rowell and Crocker at Portland was sought in the hope that diplomacy in the presence of the presidential candidate might prevail. Rowell, Johnson's representative, came to Portland and went over the whole issue in conference with Hughes. Crocker replied with the terse and tawdry wired declaration that all arrangements were completed, and appeared later at the California state line with a retinue of "tame" Progressives. I remember when he arrived on board. Someone sent him to me in the early morning. Hughes was not yet up. I recall the conversation mainly because of his insistence that Hughes be kept away from Johnson at all hazards, that the situation was well in hand and any contact with Johnson would be an offensive maneuver. This attitude he

maintained throughout the journey to the Golden Gate, and throughout the state. Crocker, the Southern Pacific aristocrat, seemed to me then and seems to me now, as I look back upon it, to have been the archtype of the *laissez-faire* Bourbon of the period, without an iota of political or national sense.

And the train sped toward San Francisco. That night, before a great audience in the Civic Auditorium, Crocker introduced Hughes. As Crocker was about to speak, somebody in the gallery arose and shouted, "Three cheers for San Francisco's favorite son." It seemed to many of us a veritable "plant," but Hughes was caught by it. Crocker was a philanthropist; Crocker was of high personal repute—even the Johnson representative stressed that—and Hughes, in response to a Crocker eulogy, began his speech with the fateful political sentence . . . "I salute with you San Francisco's favorite son." Now California was the foremost revolutionary Republican state in the Union at that moment. Progressives under the leadership of Theodore Roosevelt and Hiram Johnson had made it the very cradle of opposition to all that Crocker politically stood for. It was very evident from the Johnson record of electoral successes, during the previous six years, that the Progressives in that commonwealth outnumbered the old-time regular Republicans by hundreds of thousands. To those hundreds of thousands, the name of Crocker was a perfect symbol of the Southern Pacific Republican machine rule, with its long-time arrogance and corruption.

Hughes went on, with cold logic, but with innocently unhuman relation to his surroundings. "I come," said he, "as the spokesman of a reunited Republican party, to talk to you of national issues—*with local conditions I have no concern.*" Then the fat was in the fire. The great majority host of Johnson Progressives looked upon their long struggle for party liberty and social amelioration as a matter of national import. They forgot that this man Hughes, as governor of New York and on the Supreme Bench, had been a living rebuke and menace to all that the Southern Pacific political machine rule involved. Highly temperamental were those overwrought and militant Progressives, but they were terribly in earnest.

To my mind, something still more serious occurred next day in connection with a luncheon and speech of Mr. Hughes before the San Francisco Commercial Club, which was the social and economic center of the sort of political reaction which the Progressive Republicans had so long been fighting and seeking to destroy. On the way down from Portland, Sheppard, Mr. Hughes' publicity manager, came into the car where I was, and said: "I am troubled about the promise of the 'Governor' to speak at the Commercial Club luncheon in San Francisco. That's a very controversial club, and besides, there is a strike of the Waiters Union around the Bay of Oakland for the right to organize and share in the control of conditions associated with restaurant work, and the Commercial Club is the center of

this political dynamite." I told Sheppard that I thought it would be wiser if the luncheon were omitted, that the "Governor" had always said that he wanted the middle of the day to himself and Mrs. Hughes, and that this had been the rule. Sheppard went back to Hughes' car, and when he returned said to me, "Hughes' reply was, 'I cannot change it. The country would think that I lack courage in a matter of that kind.' "

Then the following happened. Hughes' personal manager sought out the head of the Waiters Union in San Francisco and asked him if he would hold up the walkout of the waiters at the Commercial Club—which was imminent—until after Hughes had left the city. This labor leader was entirely fair about it, and said: "The men will stay on their jobs during the luncheon, but there is one condition. There is to us a very offensive placard hanging in the window of the Commercial Club, declaring against our hopes and purposes. All that we ask is that the placard be taken down from the window of the club while our men are serving luncheon."

The Hughes manager went at once to Crocker, who was a very influential gentleman at the club, and Crocker said that he would see what could be done. Nothing was done, and the Hughes manager, discovering the name of the powerful Republican Bourbon on the local committee with Crocker, who was utterly recalcitrant about it, went to him also. And the Hughes manager reported to me that this estimable Bourbon gentleman said to him: "Take down those placards? Not on your life. We have got these labor bastards in this town where we want them at last, and we are not going to let up on them at all."

Nothing was done, and nondescripts, gathered from outlying scab restaurants, served the luncheon at which Hughes spoke. It was a matter of labor scandal around the Bay of Oakland. After the election, I took the opportunity to examine statistically the returns for that area. The "labor bastards" had their day at the polls. The 1916 election was easily lost around the Bay of Oakland. One important factor in the disaster was the unfortunate collision with terrible labor-mangement strife which for a generation had raged ignorantly and piteously on that Western Coast.

I have heard it said many times since those fateful days that the whole course of history might have been changed if Hughes and Johnson had only "shaken hands." Why didn't Hughes meet Johnson? The following Sunday afternoon, these two personalities were within four floors of each other in the Hotel Virginia at Long Beach. There was a large reception for Hughes under the auspices of the manager of the hotel, who was an ardent Crocker leader. Johnson had come in from a hard week's campaign just an hour before the reception. He learned at the desk that Hughes was expected soon. The manager knew that Johnson was there and that Hughes was coming. The whole attitude of the Crocker group which was conducting the tour of Hughes through the state, and which had arranged

the reception at Long Beach, was intensely hostile to Johnson, the governor and at the moment a great personal political power in the state, about to be nominated and elected overwhelmingly as United States senator.

When the tragedy had fallen and the cloud lay upon the Crocker leadership for a fantastic and fatal outcome, the sole justification that occurred to Crocker was put forward in a letter of November 24, 1916, after the election, to United States Senator Works of California, wherein the policy of "exclusion" of Johnson from any place near Hughes was put upon the ground that "all candidates for election in the primaries should be excluded from the Governor Hughes meetings." There was no thought of excluding Progressives generally, oh, no! Such justification of the "exclusion" of Johnson was, of course, childish in the extreme, in view of the position of Johnson in the state and in the situation, and serves only to illustrate the infantile feebleness of the Crocker leadership at a time when the history of American politics, and of the world for that matter, demanded breadth and high purpose and a reasonable generosity of soul.

The old-time political group, about to be permanently unhorsed in the imminent primary, formed a cordon about Hughes from the moment he entered California. He could not ride in an automobile without Crocker or Keesling (state chairman), or both. They never let him go. They delivered him here, there, and everywhere. Titularly, they were entitled to it. One was in the last throes of being a national committeeman and the other of being a state chairman. Nevertheless, the cordon fixed Hughes in the popular imagination for the time being in California as in sympathy with the ancient régime.

I have explained how the cordon operated at the Long Beach reception. To show how utterly alien the situation was to the mind and heart of Hughes, let me say that that night when we got back to Los Angeles—and the newspaper men, having found out that Johnson had been in the Long Beach hotel all the time, told Hughes about it—Hughes said to me: "If I had known that Johnson was in that hotel, I would have seen him if I had been obliged to kick the door down." Is there any doubt about who is responsible for the fact that Hughes and Johnson did not "shake hands?"

At the same time, Farnham, the Hughes personal representative, learned of Johnson's presence near-by, and persuaded Republican State Chairman Keesling to return with him to Johnson at the Hotel Virginia for an interview. Crocker discreetly stayed behind in Los Angeles. He took no chances. He knew his Johnson too well. What happened at that interview is very warmly but accurately narrated in a letter of the twenty-eighth of November, 1916, following the election, in which Johnson indicated his recollection to his friend Rowell, who was going East to try to explain California to the sorrowing Republicanism of the Atlantic Coast.

The general course of the conversation was vouched for by Farnham in my presence at the time of the incident in discussion with our crestfallen Hughes retinue in Los Angeles.

This, in substance, is Hiram Johnson's account in his letter to Rowell:

"On Saturday, I was in Bakersfield. My next meeting was to be at Redlands Monday night. This gave me a day of rest, and as usual, when I am within striking distance, I went to the Hotel Virginia at Long Beach. . . . I arrived about four o'clock, and saw quite a crowd at the entrance. I went to the desk, registered, and asked what was going on, and was told that Hughes was expected very shortly. . . . The manager of the hotel and those about Hughes knew that I was upstairs during the Hughes' visit—the manager was with Hughes every minute. . . .

"After Hughes' departure, I received a telephonic message from Farnham, who was in charge of the train, the same one with which I campaigned New York State. Farnham said he was Hughes' manager and wanted to see me. I told him that I would be delighted to see him. At ten o'clock that night he arrived with Francis V. Keesling [the Republican state chairman]. I started with Farnham to go upstairs, and he said that Keesling had accompanied him. . . . I said that I had no objection to Keesling being present at the interview, and then I called in two of my own campaign group, and we talked for an hour and a half. I told Farnham at the commencement of the conversation that I wanted to make clear to him that I did not need to preside at any meeting of Mr. Hughes; that the people of the state of California would not wish their governor to break through any cordon surrounding him in order that he might shine in Hughes' reflected light, and even if the people did wish this, I would not do it anyway; that you [Rowell], out of regard for Mr. Hughes and his interests, had made the suggestion that I should preside at a meeting, but that had I been aware the suggestion was to be made, it never would have been made. I explained to Farnham that loyally we were for Hughes and would continue to be for him, and that Crocker and Keesling had done him incalculable harm in California, and had lost him such a tremendous number of votes that it was doubtful whether or not with all our efforts we could win them back; that it would be our endeavor to do so, because we really wished Hughes' success, and whatever the attitude of Hughes might be, we would continue our advocacy and do our utmost in his behalf.

"In as forceful language as I could command, I explained the activities of Crocker and Keesling; that these activities were dictated solely by desire to use our presidential candidate, and that they preferred my defeat rather than Hughes' success. In the course of the conversation, I denounced bitterly both Crocker and Keesling. I explained to Farnham that Keesling had personally told me that the Republican state central committee should be neutral, and that he personally would be neutral, in the United States senator fight, and that, in a very brief period, after he had

thus pledged his word, he broke that word, and Keesling admitted it.

"I told Farnham that from the instant Hughes' coming to California was announced, the trip had been used by Crocker and Keesling and those acting with them, not for the benefit of Hughes, but for their petty ambitions, and that they might again control California's government. . . . I turned to Farnham . . . and explained to him what the state had been and what Keesling meant by the fight for state control, and told him that the sin and the crime of it were that our presidential candidate was being used in a death struggle with indecent and rotten and corrupt politics, on the side of indecency and corruption, and that the activities of our presidential candidate were being directed by Crocker and Keesling so that the foul régime which had governed California prior to 1911 might again be fastened upon the state.

" . . . I made the statement directly to Keesling and to Farnham that Crocker and Keesling had publicly said they would be for Wilson if the commonest courtesies were shown to Progressives. Keesling denied that you [Rowell] had accurately stated what he had said, but when I demanded to know what he had said, he hesitated and finally claimed that he had simply stated that Republicans would revolt if Hughes had anything to do with Progressives. Farnham kept repeating, 'My God, we didn't know these things.' . . . Farnham further said that they had changed their itinerary so that they might hold a meeting at Sacramento, and he suggested that I come up and preside at that meeting, and then turned to Keesling and said, 'Would you object to that?,' and Keesling stalled and would not answer. I replied to Farnham that any such matter ought to be taken up with Mr. Hughes and then he could advise me of his wishes. Farnham dropped the subject immediately, but asked if I would send a telegram of greeting to Hughes and assured me that Hughes would respond in like fashion to my greeting. I rather scoffed at the idea of a greeting on the eve of Hughes' departure from California. . . . I suggested, however, to Farnham that he had better take up with Mr. Hughes any such telegrams.

"Next morning, very early, I was awakened by a telephone call from Farnham at San Diego. He said that he had talked with Mr. Hughes and had told him what I said, and that Mr. Hughes believed every word of it. Farnham suggested then that I send a telegram of greeting to Mr. Hughes and that Mr. Hughes would reply to that telegram, and I said I would think of the matter. He did not again mention meetings, and aside from the one suggestion when he turned and asked Keesling's permission, he did not mention my presence at the meeting at Sacramento at all. I replied by wire to Farnham's telephonic message, as follows: 'My dear Mr. Farnham: Your early telephone message from San Diego this morning suggesting that I wire Mr. Hughes, and that he would respond, as well as your suggestion last night that I go to Sacramento and there preside at Mr.

Hughes' meeting, I have thought of most carefully. It goes without saying that I wish and have wished to extend to Mr. Hughes a most cordial and hearty welcome to California, and that in view of my advocacy of him I would be very glad to present him to my fellow-citizens and to state to them the reasons for my advocacy. Until now, it has been rendered impossible for me to do either. The men surrounding Mr. Hughes in California and in charge of his tour are much more interested in my defeat than in Mr. Hughes' election, and they have made it manifest both publicly and privately that they would vote for Mr. Wilson if the commonest courtesies were exchanged between Mr. Hughes and myself. At this late day, when both our itineraries are full and fixed, and upon the eve of Mr. Hughes' departure from California, for me, even at your suggestion, to wire Mr. Hughes and for him to reply, or for me to preside at his Sacramento meeting, would be misunderstood and misinterpreted and maliciously distorted. . . . With kindest regards to yourself and Mr. Hughes, and with best wishes for his success, I am very sincerely yours. Hiram W. Johnson.' "

Hiram Johnson, as he grew much older in the United States Senate, became unreasonably irritable, and his judgment was not dependable; but in 1916 he was at the peak of his personality and his power. He knew whereof he spoke, and his roar was the roar of a big, honest lion. Taking full measure of the temper of mind of the acrimonious Johnson, the Hughes group in that 1916 campaign train were nevertheless clear that it was the play of the Bourbons every minute to disassociate Hughes and Johnson in the public mind in California, pending the primaries, where reaction, which had shown considerable tendency toward renewed political victory in the fall of 1915 and the spring of 1916, was expected to stage a strong comeback in the summer primaries. This did not happen, but it was the ardent hope.

The effectiveness and the eagerness of the outgoing Crocker-Keesling organization in California, which was soon beaten in the ensuing primary test, is grimly reflected in the immediate comment of the *new* Republican Chairman [Rowell] to his opposite number in the state of Illinois: "The old committee had left us literally nothing but an empty office on which the rent was due. They left us not one cent of money, not a record or a scrap of paper, and not a particle of information in regard to the campaign up to that moment. I found out incidentally that National Committeeman Crocker had collected some twenty-five thousand dollars which he was holding. It took about a week to get him to acknowledge that he had it, but finally he did turn it over to us."

I have long felt that truthful political history needed to know some of these things. And especially so, since when Hiram Johnson died, the complete understanding of the press of the country and of public opinion seemed to be that Hughes snubbed Johnson and that this was the reason for the loss of California and the presidency. And now, when Hughes has

recently died, the same thing has occurred. Hughes snubbed Johnson and lost the presidency! Whatever the final reasons may seem to be, this was not one. The reality was very simple. Things turned out as they did because of a narrow partisan view concerning Johnson, a hated adversary—at a time when great issues were at stake, when vast national events were hanging in the balance. In a preliminary political heyday of power, the Bourbons blocked the wheels. To be sure, there were proximate causes; Hughes had a powerful opponent in Woodrow Wilson, even in that last great battle of the Princeton régime. The peace vote was not negligible, and the labor prejudice in California was heavy. If they had only "shaken hands," say our emotional historians, it might have been different! Well, so it might; but it is pretty clear who fundamentally made this humble act of reconciliation humanly and practically impossible.

Hiram Johnson cannot be wholly exculpated. He was brave, but he also nursed hates. If he could have risen above the feuds and pride and unholy prejudice of the California political climate of 1916, he would unquestionably be a greater figure; but psychologically it was probably too much to ask in the temper of the time. From a broad national and world standpoint, it was deplorable. Johnson, who knew that Hughes was in the Hotel Virginia with him, as Hughes did not know, might have changed the course of history by letting Hughes know he was there.

We shall never know until the judgment scrolls unroll how different it might have been. There are those who reason as follows. Germany was terribly mistaken about it, but she thought she had reason to believe that Woodrow Wilson would not fight if he were reëlected. "Too proud to fight" and other temporary phrases of that character, and long reluctance, seemed to indicate that America would not fight. But Germany believed that Hughes would fight, that there was no doubt about it, from his make-up and history. And so it is reasoned that Germany would never have turned her submarines completely loose upon our merchant shipping if Hughes had been elected, because it was pretty certain that he would fight. The First World War might have been an immensely circumscribed event and the economic agony that followed in Germany might have been far less and might not have produced Hitler, and the horror of the Second World War and the prospect of a third might have been avoided. Thus men will reason for political ages to come.

Another factor of controversy in accounting for the sad management of the crisis in California concerns Hughes himself. Did he do all that he might have done? I think that I am a fair witness, because I was an observing part of it all, because I was with Hughes in the worst of his long fights in the state of New York, because I had then, and always shall have, a most unbounded admiration for his greatness of mind and character and accomplishment, both before and after the California catastrophe. But I felt then, and I feel now, that the presidential campaign of Hughes was in

some ways a lapse in his greatness. I felt that his six years on the Supreme Bench, which immediately preceded the crucial political struggle, had put him out of touch with the changing composite yearnings and motives of the vast electorate, so that he found difficulty in unifying them and resolving them. Keen people wrote me about it from different parts of the country—all friendly to Hughes. Henry J. Haskell, of the *Kansas City Star*, spoke of Hughes' appearance in Kansas City: "His speech here gives me the impression of being perfunctory and of indicating no comprehensive grasp. . . . If the independent voters of the Western country are to be persuaded to replace President Wilson by Mr. Hughes, they will have to be convinced that he is more than a critic, that he has a great program." An able lawyer from New York City—otherwise backing Hughes to the limit—spoke of the Hughes argument as over-cautious, as pussyfooting. John Palmer Gavit, one of the foremost Hughes supporters of the governorship days, wrote in the *New York Evening Post* magazine of November 18, 1916, immediately after the election, a scathing criticism under the heading—"What Hughes Was This?" And this about a political giant who strode the platforms of New York State through a memorable four years with a tread of power never before or since equalled in that commonwealth.

There was something about the divided mind of the electorate in the 1916 campaign, something about the fierceness of personal attack and contention within his own party ranks, that dogged Hughes constantly and mystified and thwarted him. I am sure that he felt it himself. On the way back from the Pacific Coast, we stopped at Estes Park for a few days to give the candidate a rest. He thought his speeches were not going over well, and asked a group to prepare something new and different. They tried it, but I am not sure that they were of much help. The pall of those six years on the bench still hung over us, so it seemed to me. But gloriously Hughes broke loose from such a condition of mind when the campaign was over, and in the years following became again a marvelous figure on the stage of statesmen.

In California, it was not on Hughes' part so much a failure of intelligence as it was a temporary failure of will. How often during those unhappy days I longed for one swish of the club of Theodore Roosevelt. Or one blast from the old Hughes trumpet of the New York days—and it all would have been over. That was what was lacking. Stiff-backed Bourbonism, petty and outworn party philosophy, personal pique, long-standing rancors, would have bowed under it, I feel sure. But never let it be said that the truth about California may, to any degree, tarnish the name or fame of Charles E. Hughes. He was human, but he was mighty. As long as men love unselfish greatness in public affairs, so long will the memory of this man be cherished by a grateful America.

FOREIGN GOVERNMENT AND POLITICS

THE BRITISH CIVIL SERVICE IN TRANSITION

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It must be confessed that, outside the inner circles of the administration, people in Great Britain show little interest in their civil service. It is taken for granted by the majority and used as an Aunt Sally by a considerable minority to whom the merest suspicion of that much overworked epithet, "bureaucrat," acts as a red rag to a bull. Much wider interest in the British civil service has, in fact, been shown in the United States, whence the most illuminating writings on the subject have almost invariably emanated. For this reason, the present writer believes that there must be many members of the American Political Science Association who will be interested in a brief survey of civil service development, with particular reference to the changes at present in hand. It might be as well to point out that this essay is written with all the prejudices of a writer in Britain, e.g., with regard to the importance of open competitive recruitment and a quite different approach to veteran preference; but this in itself may add something to the article's interest.

I. HISTORICAL PERSPECTIVE

No one can consider the British civil service even superficially without becoming aware of the continuing influence of the Trevelyan-Northcote Report of 1853. The civil service visualized in that report was to have six main characteristics which it will be helpful to summarize. (1) It was to be impartially recruited by a system of open competitive examinations. This was the key proposal of the reformers, which was fiercely advocated in strong reaction to the patronage system of appointment that had so long flourished and was hopelessly failing to meet the administrative needs of the times. (2) The efficiency of such an examination system would depend upon the existence of a broad division of administrative labor within the service which the report achieved by dividing the office work of the administration into two layers, the first to be carried out by recruits of high intellectual standards and the second by recruits on a more modest educational level—leaders and workers, as it were, or administrators and clerks. (3) Such a division of labor, to be applied effectively, would require a service-wide classification of posts in place of the existing diversity of departmental groupings. (4) Recruitment of the two classes would be geared to the existing educational system, and the traditions of aristocratic leadership would be maintained, since only those achieving distinction at the university would stand much chance of entering the leader-

ship group. (5) The maintenance of aristocratic leadership meant in effect that the civil service, in the traditions of the existing ruling class, would eschew self-seeking in office and reject professionalism. (6) The status of the official as a servant of the crown would be maintained, and in the new hierarchy the subordinate officer would be subject to control from above which would be paternalistic in the best sense. He would continue to receive his official advantages, not as rights, but as privileges subject to withdrawal at any time.

All this is indeed well-known; but it has too important a bearing on our changing service to be omitted. For, even if all of the aims of the reformers have never been fully achieved, for good or ill their spirit marches on today and struggles with the new demands by which our modern civil service is confronted.

At the end of the First World War, a much overdue reorganization of the civil service was recommended by a committee of the recently appointed National Whitley Council, which had the recommendations[1] of the MacDonnell Commission (1912–15), the Haldane Committee (1918), and the Gladstone Committee (1918) on which to base its proposals. The new organization, upon which the service is still substantially moulded, divided the administrative side into three main classes, viz., administrative, executive, and clerical, keyed at the recruitment stage to the three main levels of the educational system and embodying the Trevelyan-Northcote principles with one exception. Henceforth the main classes were thrown open to both men and women; but there were also subclerical classes of writing assistants and typists, recruited only from young women.

The exception was exemplified by the body making these proposals. The function of the National Whitley Council for the Civil Service, a committee on which both the senior officials (as an official side) and the subordinate staffs (as a staff side) were equally represented, was to consider and to decide jointly matters of staff conditions and organization. In fact, recognition of representation through his staff association as a fundamental right of the civil servant, a factor upon which the whole scheme of Whitley Council representation depended, led to the one revolutionary change in the British civil service at the end of the First World War. Paternalism might linger so long as officials of the old school continued to hold posts, and especially in those administrative backwaters where changes are always slow to penetrate; but as a principle it was already doomed by the new spirit burning in the breasts of those many civil servants who had seen service in the trenches.

In 1929, the latest of the royal commissions to investigate the civil

[1] See particularly "Fourth Report of the Commissioners," Cmd. 7338 (1914), and "Report of the Machinery of Government Committee," Cmd. 9230 (1918).

service was appointed under the chairmanship of Lord Tomlin, by whose name it is usually known. The Tomlin Commission, which reported in 1931,[2] found little to criticize in the organization and system of recruitment introduced after the war. It did propose more extended use of the writing assistant grade and the introduction of a sort of overlapping grade between the clerical officer and supervisory grades, mainly to provide early advancement to younger members of the former grade. The first proposal was accepted, the duties of the sub-clerical class being extended to include some of the simpler work of the clerical class and the title of its members being changed to "clerical assistants"; but the second proposal, which met considerable opposition within the service, was not adopted—it would have been difficult to incorporate the proposed change in the existing structure.

The Tomlin Report was obviously greatly influenced by the world-wide financial crisis in process during the commission's sittings. It could not in any case have been expected to foresee the period of expansion in governmental activity that lay ahead. Thus in the early thirties the old civil service appears to have reached a sort of apogee at which the principles of 1853 not only attained their greatest currency, but also fully justified themselves by the way they fulfilled the administrative needs that they had been designed to meet.

Few were then able clearly to discern that a new world was opening out in which at least some of the presuppositions of the old civil service might no longer be valid—except perhaps those numerous prophets whose prognostications soared too much on the heights to be interested in mundane matters of administration; and at that particular moment they were much too concerned with premonitions of universal doom to dwell upon the problems of modifying the civil service to fulfill the requirements of a constructive future. Both practice and theory were waiting upon the impulsion of events.

During the thirties, important administrative changes in Britain were under way, though they appear more clearly in retrospect than they did at the time, when there were so many cross-currents to obscure the contemporary trend of events. To cope with the economic crisis, the Board of Trade and other central departments acquired new functions, marketing boards were established in various branches of agriculture, and, to deal with the social consequences of high unemployment, an Unemployment Assistance Board was added to the list of central departments; while in the latter part of the decade, in face of the growing threat to peace in Europe, defense preparations further extended the scope of public administration. On the eve of the Second World War, the non-

[2] "Report of Royal Commission on the Civil Service, 1929–31." Cmd. 3909 (1931).

industrial civil service numbered 422,000—an increase of 111,000 in the previous "stagnant" decade. So far, however, only the tentative foundations of a new administrative order had been laid: the greatest changes were yet to come.

Let us pause briefly to survey the position of the civil service in 1939. The Reorganization Scheme of 1920 was in full operation in a majority of departments; elsewhere, functional needs were being met by specialist departmental classes usually not very dissimilar in pattern to the general classes. The basic grades of the administrative, executive, and clerical hierarchies were being separately recruited by written open competitive examinations, and movement from one class to another was still unusual except in departments where a sort of mixed or hybrid structure had been adopted. After a protracted period of stagnancy, due to postwar contraction and the effect of economy drives in the twenties and early thirties, promotions from the basic grades were becoming more frequent, with consequent encouragement to those who for too long had been consistently depressed by their prospects. Although young recruits had been coming in from the schools since the late twenties, the general age grouping was, owing to the large influx of ex-servicemen during the first postwar decade, still abnormally high. Consequently there was a shortage of young competent officials in their early thirties. In addition to this, the generally unenterprising policy that ruled throughout the nation for so long meant that "safe" men had been preferred for the higher posts. During the period of national stagnancy which characterized the postwar era with its high level of unemployment, there had clearly been a waste of talents within as well as outside the civil service. To sum up: the civil service in 1939 was highly competent, if a little unenterprising. The latest reorganization had proved a success, and if it was failing to give the highest results of which it was capable, that was due less to shortcomings in the system than to the peculiar environment in which it had been called upon to operate. The civil service still had untaxed potentialities. Only the future could show whether it would prove adequate to the demands about to weigh down upon it.

II. RECENT EXPERIENCE

When the war came, a number of embryonic departments were all ready to expand in order to cope with the government's wartime responsibilities. There was a rapid influx, from business and the professions, of temporary civil servants whose expert knowledge was required. Permanent civil servants, even in the older departments, were called upon to change their work without delay. The plans carefully worked out justified themselves, and few major difficulties arose during the changeover. A little later, evacuation and bombing failed to hold up the good

work. The newcomers were assimilated; public criticism, never stilled even in wartime, was adequately met. The staffs themselves coöperated through their National Whitley Council in providing for the early suspension of many of the civil service's normal privileges. Civil servants were reserved in their occupation or released for other war service in accordance with the national manpower plan, and the individual had no more choice as to whether he should serve in the Forces or stay in his civilian job than did any other member of the community. There were more promotions, with more movement between departments, and thus much more flexibility than before. In other words, the civil service in this grave crisis carried on and was justified in its previous experience and practices.

While the war was still in progress, planning of the future civil service was already in hand. The National Whitley Council's Report on Post-War Recruitment, published in 1944,[3] outlined a scheme of Reconstruction examinations designed to avoid the haphazard methods of 1919 and provided for the recommencement of normal examinations with the least possible delay. A Report of the Select Committee on National Expenditure in 1942[4] recommended the improvement of organization and methods in the civil service, a proposal quickly put into operation by the expansion and closer coördination of existing branches under a special Organization and Methods Division at H.M. Treasury. The same report led to the setting up of a committee on the training of civil servants (known as the Assheton Committee), which in its report of 1944[5] proposed a wide extension of staff training under the leadership of a central branch. This also was implemented quickly. An enhanced interest in efficiency methods and staff training—neither of which had been seriously enough considered during the inter-war period—which is now everywhere in evidence is certainly one of the most heartening signs of the times. The two Treasury branches concerned with general oversight of these matters are making notable contributions in their respective fields.

As soon as hostilities ceased, preparations were made in the Departments to receive back those officers who had completed their service in the Forces; at the same time, there was a tendency for temporary officers to return to their old occupations without delay and for others to look around for jobs while the going was good. To avoid serious shortages, this efflux was moderated by the operation of the Control of Employment (Civil Servants) Order, 1945, laying down that a civil servant could not

[3] "Recruitment to Established Posts in the Civil Service During the Reconstruction Period." Cmd. 6567 (1944).

[4] "Sixteenth Report from the Select Committee on National Expenditure, Session 1941–1942" (1942).

[5] "Report of the Committee on the Training of Civil Servants." Cmd. 6525 (1944).

terminate his official employment without written permission from his Department. This order was lifted early in 1947, by which time the new postwar needs of the civil service had been clarified, even if they had not been fully satisfied.

The postwar civil service does not look very different from its predecessor. Its structure is virtually the same, and most of the principles of 1853 still obtain. The main change is a change in scale. In 1948, its total amounted to over 700,000, little short of the highest war-time total—and there is little prospect of any substantial contraction. Wartime ministries and agencies, such as the Ministry of Food, the Ministry of Supply, and the Central Office of Information, have continued; new ministries, such as the Ministry of Town and Country Planning, the Ministry of Fuel and Power, and the Ministry of National Insurance, have been established to cope with the government's extended responsibilities in economic and social affairs; while other branches of the administration, expanded during the war, are needing much larger staffs than previously. The civil service is no longer concentrated in Whitehall; apart from administrative devolution, a far-reaching dispersal is being planned. It is no longer merely an office organization; its social contacts have been greatly broadened, e.g., to deal with members of the public on matters of employment and national insurance. There has been a great expansion in the small but powerful administrative class, viz., from approximately 2,000 in 1939 to over 4,000 in 1948, and in the various professional and scientific classes. Previous difficulties have been magnified; the problems of personnel administration are more insistent than ever they were.

A number of comparatively minor changes have been introduced which, if not totaling up to a revolution, will lead eventually to a considerable modification of the prewar civil service. One of the first was a modification of the grade structure of the administrative class in order "to facilitate speedy and efficient transaction of public business by the maximum devolution of responsibility and by the reduction of steps in the administrative structure to the minimum consistent with the needs of sound organization."[6] At the same time, an adjustment was made in top salaries, which, however, are still much below what their recipients would be likely to earn elsewhere, e.g., in the new public corporations. At the lower end of the structure, difficulties in obtaining sub-clerical workers, especially typists, at the wage rates offered by the civil service have led to a close assimilation of the typing and clerical assistant classes. In accordance with national policy, the marriage bar, which decreed that women civil servants marrying while in the service should resign, has been rescinded.

[6] "The Administrative Class of the Civil Service." Cmd. 6680 (1945).

The increased importance of the professional and technical sectors of the civil service, about which there was a good deal of understandable unrest before the war, has now been met by the reorganization of a series of separate departmental groups into all-service classes with a structure generally parallel with that of the executive and administrative classes.[7] Thus there are now separate service hierarchies for scientists, legal officers, statisticians, actuaries, medical staff, professional accountants, and the works group of professions, i.e., architects, surveyors, quantity surveyors, civil and structural engineers, and lands officers. The Foreign Service, always distinct from the home civil service, has been broadened to include both senior and subordinate staffs of the Foreign Office and is in process of being thoroughly reorganized.[8]

The Reconstruction examinations were designed to recruit ex-servicemen and women to the main classes on a fair basis which would, while testing the candidate's competence in relation to his future duties, allow full opportunities to all who had been prevented by the war from competing for civil service posts. Normal open competitive methods were modified by insisting upon a minimum educational record appropriate to the particular civil service class, and the examinations were of a general nature, consisting of written papers and usually an interview. The most interesting departure from previous practice was the application of the country house party procedure which was so successfully operated during the war for the selection of army officers from the ranks. This was carried out by a specially appointed Civil Service Selection Board under the Civil Service Commissioners. There has been much controversy over this innovation, which adopted psychological methods better known in the United States than in Britain. No one challenges the ability or the sincerity of the manipulators of these new techniques; what is in doubt is their understanding of administrative processes and their, or indeed anyone's, competence to forecast the administrative potentialities of the candidates by such means. Effective administration depends so much upon experience and wisdom that it is doubtful whether it is detectable at such an early stage. The selection of the military field officer is clearly a simpler proposition. Ability to react rapidly and fearlessly to a situation on the battlefield is much easier to assess, and in any case no considered method, however unscientific, could have failed to give better results than those used in the First World War, when the selection of an officer still rested largely upon the social status of the applicant. The end of the Reconstruction period is already in sight and normal open competitions were resumed as early as 1946. The number of applicants for the latter are disappointing, which suggests that the civil service is now a much less at-

[7] "The Scientific Civil Service." Cmd. 6679 (1945).

[8] "Proposals for the Reform of the Foreign Service." Cmd. 6420 (1943).

tractive field of employment than formerly. In order partly to meet this problem, the basis of the prewar examination has been widened with the object of providing more opportunities for entry to the main basic grades of university graduates, of persons with peacetime service in the Forces, and of established members of the civil service. In some instances, the modified non-academic written examination and interview of the Reconstruction period is being retained, while for certain of the senior entrants the Civil Service Selection Board test will continue. In the case of the most subordinate class, the clerical assistants, frequent local examinations of the short-answer type are being substituted for the previous centralized academic examination.

A most important change is the tentative step made to amalgamate the three separate hierarchies—viz., administrative, executive, and clerical—by tying them more closely at the top. In the case of the clerical and executive classes, this means a complete identity of the two classes above the first supervisory grades (higher clerical and junior executive), all the higher posts being now classified as executive. Between the executive and administrative the tie-up is to be more tentative, in fact, very theoretical. It rests in a proposal to reduce the number of parallel gradings wherever possible and to arrange for senior members of the executive class to act in direct subordination to more highly graded members of the administrative class (e.g., senior executive officer normally working to principal to work direct to assistant secretary). For the first time, provision is being made for promotional advancement by examination for junior civil servants to the executive and administrative classes.[9]

III. THE POSITION TODAY

In view of the greatly increased participation by the government in the economic and social life of the nation, there can be little doubt that more civil servants will continue to be required in the future. Compared with

[9] As the draft of this article is being completed, news comes that the National Whitley Council has agreed upon an improved superannuation scheme for civil servants which embodies *inter alia* (a) a contributory pension scheme covering widows and other dependants and (b) retention of pension rights by a civil servant retiring voluntarily after reaching the age of fifty. The latter consideration, which includes the right on the side of the departments to call upon a civil servant above that age to retire, is of particular interest. It is a radical departure from current practice under which a civil servant retiring, except for health reasons, before reaching his sixtieth birthday relinquishes all pension rights. It will make the present structure much more flexible and if wisely administered will, by encouraging the early retirement of senior civil servants to whom the official environment is no longer agreeable, help to reduce stagnancy in the top positions. The proposals will require statutory sanction, matters of superannuation being the only provisions affecting the civil servant's conditions of service with which Parliament normally concerns itself.

the stagnant period following the First World War, the new entrant today has more opportunities for advancement and there is a greater variety of work to be performed. Yet it cannot be doubted that the civil service is a less attractive profession than it was. In some directions it has lost ground in relation to outside employments: its hours are longer than they were; it still works six days in the week when so many outside occupations now work only five; its scales of pay have failed to keep pace with the increased cost of living. A stream of adverse comment in the press, frequent criticism that is too often uninformed, must have influenced the minds of the young. But apart from this relative decline in the service's attractiveness, there are two major changes in the modern world that are bound to influence the young person against choosing the civil service as a career: first, under a policy of full employment there are plenty of suitable jobs elsewhere; second, in an unstable civilization, security of employment and eventual superannuation are likely to exert a smaller pull than they did, while, at the same time, universal pensions under social security mean that the fear of destitution is lessened. Consequently there will be many who previously would have chosen the civil service who will now prefer to take a chance in the open market. Under the new conditions, the civil service is less likely than ever before to attract the adventurous and the enterprising. All this is recognized by the authorities, and much is being done to cope with the situation.

May we now look at the civil service of today in relation to the six principles of the Trevelyan Northcote Report summarized earlier in this discussion, viz., (1) impartial recruitment, (2) division of labor on an educational basis, (3) service-wide classification of posts, (4) aristocratic leadership, (5) non-professional outlook, and (6) paternalistic control?

(1) *Impartial recruitment.* This is still the accepted principle. Open competitive methods continue to be employed, although for the future certain limitations are being introduced for some examinations; and these seem more likely to lower educational standards than to reduce the element of impartiality.

(2) *Division of labor on an educational basis.* This principle is being maintained, but much less rigorously. It is not incompatible with a more homogeneous structure, but the maintenance of the classes as separate status groups is no longer compatible with functional efficiency.

(3) *Service-wide classification.* This is still not universally applied, but recent developments seem to indicate some further contraction of the field of departmentalism. On the other hand, developing governmental functions, especially in the social field, suggest that the scope for a service-wide personnel structure has reached its limits and that in future the demand for specialists will increase, particularly within the administrative-clerical field.

(4) *Aristocratic leadership.* It will be observed that the dominating position of the administrative class is not to be altered in any radical way. It may be easier in future for a brilliant official to rise from the ranks, but the old traditions die hard. There is certainly a more modest demand from within the service to alter this than one would have expected. The average civil servant becomes conditioned to accept things as they are.

(5) *Non-professional outlook.* This is still considered the proper attitude, but in today's complicated world it surely is an anachronism. Civil servants are not interested in the mysteries of their craft. There is little research, and the universities still look at public administration academically rather than practically. The Institute of Public Administration—a voluntary body of public officials—continues to receive fantastically limited support from civil servants. The position is so different in America in this connection that the reader will find it difficult to believe how uninterested public officials in Britain are in the study of and research into their professional functions and methods.

(6) *Paternalistic control.* As we have seen, this practically disappeared after the First World War. Now the Whitley Council system has become an institution through which civil servants participate continuously in revising their conditions of service, although, as with all institutions, increased size and efficiency tend to render it less flexible in representing the views of the rank and file. This is too big a problem to develop here, and in admitting so much it must not be taken as any criticism of the invaluable work carried out by the Civil Service National Whitley Council and the various departmental Whitley councils during the war and the reconstruction period. Had such bodies not existed, they most certainly would have had to be created.

IV. AND THE FUTURE?

The vital questions today appear to be: Is it likely that a civil service, moulded to the needs of the nineteenth century and still maintaining much of its original structure, will serve without radical modification the needs of the Social Welfare State? And if such modification is necessary, can the new system continue and maintain the traditions and effectiveness of the old civil service? The answers, in the writer's opinion, are "no" to the first and "yes" to the second.

It should be clear from the foregoing sections that considerable changes are in hand; and if the method of their introduction is unspectacular, that is well in line with British tradition and is certainly not a criticism in a world that inclines more and more to spectacular appearance in preference to the achievement of mundane reality.

A radical change has taken place in the relationship between the civil

service and the national community. As a non-competitive and stable island of activity within a broadly competitive economy, the old civil service performed its limited regulatory functions well. A comparatively limited field of employment that preferred the maintenance of modest status and high standards could afford to ignore the assumptions of individual competitiveness in a wider environment in which competition was too often ruthless and carried to excess. Most certainly today, when the area of socialization is rapidly expanding, this contrast is no longer so pointed. Moreover, while the old compact civil service could be led largely by the precept and example of a leadership class, it is clear that today the civil service is fast expanding beyond the compass of such traditional methods of control. The encouragement of personal initiative within the service is clearly the key problem of today. For while in the past this problem had been generously solved in the wider community and was of small importance in the government service, today it needs most urgently to be solved afresh in both spheres; and it seems likely that the civil service has much to contribute, if for no other reason than that it provides a remarkably varied field for experimentation.

How briefly, in the light of the points brought out in this paper, should one expect developments to take place? The main objective should surely be to convert the civil service into a real career service. This means breaking away from the tradition that members of only one particular class are the potential administrators and ensuring that every entrant to the service of the state should have in his ambitious mind the vision of becoming entitled to a carpet in his room. This would mean a considerable modification in the present grade structure; but possibly it will be achieved by pressing forward recent changes to their logical conclusion.[10] Greatly increased opportunities must be provided for the civil servant to exercise his own choice in the type of work he shall perform. In the past, he has usually had to stay where he was put and little attempt was made to make full use of his capacities. Certainly there must be more opportunities for selected officers to obtain practical experience in allied fields of activity. In other words, the full exercise of initiative must be encouraged. No officer should be assured of retaining his grading unless he is fully competent, and therefore the principle of demotion must be introduced. In view of the growing complexity of his craft and of its increasing scope, the civil servant must be encouraged to take a professional interest in the study of public administrative theory and practice. There must be much more research into administrative matters, and a much more effective ex-

[10] Proposals toward the supersession of the present three-class structure are contained in my *The Civil Service; Its Problems and Future* (2nd ed., London, Staples Press Ltd., 1948).

change of information must be organized, both by the universities and by the civil servants' own organizations.

While it is not expedient that the civil servant ever regard himself as a member of a closed profession, it is essential that his professional consciousness become positive rather than negative, as it too often is at present. It is indeed doubtful whether all the changes that appear so necessary could be confined within the present civil service structure, however flexible that may become, and it is to be considered whether we should not look forward to the formation of a national, and perhaps eventually an international, administrative service, to which members of the local government, public corporations, and other public administrative services would belong.

Although in this brief account of the situation in the British civil service a comparatively narrow field of administrative operation has been considered, so that no doubt many of the points made will appear of much less cogency to the American reader, there can be no doubt that at the conclusion of this unpretentious study we have reached a problem of world-wide importance. The future of civilization undoubtedly depends in no small measure upon efficient administration. How can we further the advancement of the art and science of administration, in both its general and public aspects, and evolve a corps of public administrators of high integrity and morale, who are self-sacrificing yet enterprising in the cause of the common weal and urgently imbued with the desire to further research into the techniques and practices of management by which the welfare of mankind may be both extended and preserved? This is the real "managerial revolution" for which the world is waiting and which current ideologies airily ignore.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

At the date of writing, the Nominating Committee of the American Political Science Association is undecided whether to poll all members for suggestions, as in recent years. If such a poll is not taken, the Committee will hope that many members will none the less submit suggestions and views, to the chairman or any other member. The composition of the committee is indicated below.

Committees of the American Political Science Association for the Year 1949*

Nominations: Arthur N. Holcombe (*chairman*), Harvard University; James W. Fesler, University of North Carolina; John E. Briggs, State University of Iowa; Katharine A. Frederic, U. S. Civil Service Commission; Boyd Martin, University of Idaho; Ivan Stone, Beloit College.

Nominating Procedure: Edward Mead Earle (*chairman*), Institute for Advanced Studies, Princeton, N. J.

Program: Ernest Griffith (*chairman*), Legislative Reference Service, Library of Congress; James K. Pollock, University of Michigan; Brooks Emeny, Foreign Policy Association; Herman Finer, University of Chicago; Marian Irish, Florida State University; Willmore Kendall, Yale University; Wilfrid Parsons, S.J., Catholic University; Donald C. Stone, Economic Coöperation Administration; Francis Wormuth, University of Utah.

Local Arrangements for Annual Meeting, 1949: Walter R. Sharp (*chairman*), City College of New York; John D. Millett (*vice-chairman*), Columbia University; Father Morehouse I. X. Millar, S.J., Fordham University; William J. Ronan, New York University; Ruth G. Weintraub, Hunter College; Charles S. Ascher, Brooklyn College.

American Political Science Review: V. O. Key (*chairman*), Johns Hopkins University; Robert E. Cushman, Cornell University; Robert J. Harris, Louisiana State University; Peter H. Odegard, University of California; Benjamin F. Wright, Harvard University; Paul H. Appleby, Syracuse University.

Directory: Kenneth Colegrove (*chairman*), Northwestern University; Franklin L. Burdette (*editor*), University of Maryland; William Anderson, University of Minnesota; John E. Briggs, State University of Iowa; Robert E. Cushman, Cornell University; Arthur W. Macmahon, Colum-

* The list here given is as of March 25 and is subject to additions and other changes, especially in instances where only the chairman is indicated.—*Man. Ed.*

bia University; Frederic A. Ogg, University of Wisconsin; Harvey Walker, Ohio State University.

Washington Headquarters: Roscoe C. Martin (*chairman*), University of Alabama; Luther H. Evans, Library of Congress; Paul H. Appleby, Syracuse University; Peter H. Odegard, University of California; Rowland A. Egger, University of Virginia; Harvey C. Mansfield, Ohio State University; Bryce Wood, Swarthmore College.

Awards: Arthur W. Macmahon (*chairman*), Columbia University; Kenneth Colegrove, Northwestern University, chairman of panel on Willkie Memorial Award; John M. Gaus, Harvard University, chairman of panel on Franklin D. Roosevelt Memorial Award; William Anderson, University of Minnesota, chairman of panel on Woodrow Wilson Award.

Regional Societies: John E. Briggs (*chairman*), State University of Iowa; Laverne Burchfield, Public Administration Clearing House; Matthew C. Mitchell, Brown University; Pitman B. Potter, American University; Ernest S. Griffith, Library of Congress; Glenn G. Wiltsey, University of Rochester; James A. Gathings, Bucknell University; Thomas C. Donnelly, University of New Mexico; Carlton C. Rodee, University of Southern California.

Advancement of Teaching: Marshall E. Dimock (*chairman*), Bethel, Vermont; Ruth G. Weintraub, Hunter College; V. O. Key, Johns Hopkins University; James W. Fesler, University of North Carolina; Harold M. Dorr, University of Michigan; Howard White, Miami University; E. Allen Helms, Ohio State University; Claude E. Hawley, U. S. Office of Education.

Aid to European and Asiatic Scholars: John Brown Mason (*chairman*), Oberlin College; Kenneth Colegrove, Northwestern University; Royden J. Dangerfield, University of Wisconsin; Waldemar Gurian, University of Notre Dame; Clarence A. Berdahl, University of Illinois; Pitman B. Potter, American University; John A. Vieg, Pomona College; Taylor Cole, Duke University; Belle Zeller, Brooklyn College; Frederick S. Dunn, Yale University.

Legislatures: Belle Zeller (*chairman*), Brooklyn College; Joseph P. Harris, University of California; Joseph P. Chamberlain, Columbia University; Brooke Graves, Library of Congress; O. Douglas Weeks, University of Texas; Jack Isakoff, Illinois Legislative Council; Jack A. Rhodes, P. O. Box 64, Milan, Kansas; Donald Axelrod, Room 332, State Capitol, Albany, N. Y.; Mona Fletcher, Kent State University; Frederick H. Guild, Kansas State Legislative Council; Lashley G. Harvey, Boston University; Charles W. Shull, Wayne University.

Political Parties: E. E. Schattschneider (*chairman*), Wesleyan University; Clarence A. Berdahl, University of Illinois; Hugh A. Bone, University of Washington; Franklin L. Burdette, University of Maryland;

Paul T. David, International Civil Aviation Organization, Montreal; Merle Fainsod, Harvard University; Bertram M. Gross, Council of Economic Advisers, Washington, D. C.; E. M. Kirkpatrick, Dept. of State, Washington, D. C.; John W. Lederle, University of Michigan; Fritz Morstein Marx, U. S. Bureau of the Budget; Howard Penniman, Dept. of State, Washington, D. C.; Kirk H. Porter, State University of Iowa; Jasper B. Shannon, University of Kentucky; E. Allen Helms, Ohio State University; Louise Overacker, Wellesley College; Thomas S. Barclay, Stanford University.

Political Participation: Ben A. Arneson (*chairman*), Ohio Wesleyan University; Hugh A. Bone, University of Washington; William S. Carpenter, Princeton University; Estes Kefauver, U. S. Senate, Washington, D. C.; Roy V. Peel, Indiana University; Josephine Pisani, Queens College; Carl Santoro, Western Michigan College of Education; Arthur T. Vanderbilt, Supreme Court, Trenton, N. J.; John A. Vieg, Pomona College; Howard White (*vice-chairman*), Miami University; Harold F. Gosnell, Dept. of State, Washington, D. C.; Karl Lowenstein, Amherst College.

Labor-Management Relations: Phillips Bradley (*chairman*), University of Illinois; Hugh A. Bone, University of Washington; Harold W. Davey, Iowa State College; Louis C. Kesselman, University of Louisville; Avery Leiserson, University of Chicago; Rollin B. Posey, Northwestern University; Henry Reining, Jr., University of Southern California.

International Cultural Relations: Pitman B. Potter (*chairman*), American University; Clarence A. Berdahl, University of Illinois; Clyde Eagleton, New York University; Malbone W. Graham, University of California (Los Angeles); John Brown Mason, Oberlin College; Walter R. Sharp, City College of New York; Eli E. Nobleman, Washington, D. C.; Payson S. Wild, Jr., Harvard University.

Latin-American Affairs: Russell H. Fitzgibbon (*chairman*), University of California (Los Angeles); Willard F. Barber, Dept. of State, Washington, D. C.; A. N. Christensen, University of Minnesota; William Ebenstein, Princeton University; William S. Stokes, University of Wisconsin; Graham H. Stuart, Stanford University; Arthur P. Whitaker, University of Pennsylvania.

During the current semester, Professor Heinz Guradze is conducting two courses in comparative government at Smith College as visiting lecturer.

During the coming summer session at the University of Denver, Professor Grayson L. Kirk, of Columbia University, will offer an advanced course on international relations.

Dr. Charles S. Ascher, lately returned from service as special assistant

to the director general of UNESCO, has been appointed professor and chairman of the department of political science at Brooklyn College.

In late January, Professor Thomas I. Cook, who had served nine years at the University of Washington, though currently visiting professor at the University of Chicago, resigned from the Washington faculty in protest against the summary dismissal or probation of six members of that faculty on charges of Communist connections or sympathies.

Mr. T. A. Bisson is serving as lecturer in political science at the University of California (Berkeley) during the 1948–49 academic year, offering courses on the government and politics of Japan, problems of the Pacific, Far Eastern international relations, and the foreign service of the United States.

At the University of California (Berkeley), Professors Frank M. Russell and N. Wing Ma have returned from first-semester sabbaticals, and Professor Hans Kelsen and Eric C. Bellquist are at present on leave.

Drs. Bogumil Vosnyak and George Guins have recently been appointed to the staff of the Institute of Slavic Studies, University of California (Berkeley), and are offering courses in the political science department on government and politics of the Balkan states and in Russian and Soviet law, respectively.

Under an expanded program instituted in criminology, the bureau of criminology, department of political science, University of California (Berkeley) has added the following staff members: Dr. M. Edwin O'Neill, associate professor of criminalistics; and Dr. Walter Bromberg and Chief John D. Holstrom, lecturers in criminology.

At Dartmouth College, Professor Harold R. Bruce is on leave during the current term and Professor Elmer E. Smead has resumed teaching.

Visiting professors at the University of Minnesota during the first and second terms, respectively, of the coming summer session will be Professors Kimbrough Owen, of the University of Louisiana, and James W. Fesler, of the University of North Carolina.

During the fall semester of 1948–49, Dr. Samuel Guy Inman served as visiting professor of Spanish and political science at the University of Florida, teaching courses on Latin-American government and Latin-American civilization.

Professor Stuart A. MacCorkle, director of the bureau of municipal research at the University of Texas, has been appointed by Governor Beauford H. Jester chairman of a commission with instructions to make a thorough study of state tax structure.

Professor Harold M. Dorr, of the University of Michigan, is on sabbatical leave during the current semester, and during the summer will serve as consultant on legislative problems to Military Government in Germany. Professor Lawrence Preuss has been granted sabbatical leave for the first semester of the 1949–50 academic year and Professor Everett S. Brown for the entire year.

Professor Dayton D. McKean, of Dartmouth College, will teach during the coming summer at Columbia University and Dr. Robert Dishman at the University of Missouri.

On January 28, Georgetown College (Kentucky) conferred upon Dr. John W. Manning, commissioner of finance of Kentucky since early in 1948, the honorary degree of doctor of laws.

During the winter quarter of 1949, Professors Herbert McCloskey and Alfred de Grazia participated in an interdisciplinary seminar in the department of psychology at the University of Minnesota. Their contributions related to psychology and politics.

Professor Arthur Naftalin, of the University of Minnesota, will act as adviser to a student group studying in England during the coming summer. The group will be one of several that will study in different countries under a plan originated at Minnesota and termed the "Society for the Promotion of Amity Among Nations."

Visiting professors at Northwestern University during the 1949 summer session will include Dr. Peter H. Odegard, of the University of California (Berkeley), and Dr. Herman B. Chubb, of the University of Kansas.

Mr. Fredryc R. Darby, lecturer in political science at the University of California (Berkeley) during the fall semester, 1948, is continuing teaching during the spring semester, 1949, offering work in international organization.

Professor Benjamin F. Wright, of Harvard University, has been chosen fifth president of Smith College and will be inaugurated at a special convocation on October 19–20 celebrating the college's seventy-fifth anniversary.

Professor James K. Pollock, of the University of Michigan, will teach at the University of Southern California during the 1949 short summer session.

Professor Gordon Skilling, of Dartmouth College, has been appointed senior fellow at the Russian Institute, Columbia University, for 1949–50 and will spend the year in research at the Institute, with also a European field trip.

At the University of Michigan, Professor John A. Perkins, recently serving as budget director of Michigan, returned at the beginning of the second semester to his regular teaching position.

During the coming summer, Professor Harvey Walker, of Ohio State University, will offer courses in legislation and public administration at the University of Idaho.

At a national conference on American foreign policy held by the Department of State on March 17–18, the American Political Science Association was represented by Dean Pitman B. Potter, of the American University.

At Western State College of Colorado, Professor Robert W. McCulloch has been appointed chairman of graduate studies.

Dr. Julian Fahy recently resigned as tutor in political science at Olivet College to become a staff member of the committee on expenditures in the executive departments, national House of Representatives.

At Amherst College, Professor Earl Latham has recently been appointed chairman of the department of political science.

Since returning from a period of European study and observation, Professor Fred Nora has been teaching at William Penn College, Iowa.

On leave from the International Labor Office since 1947 to serve as legal consultant to the U. S. War Crimes Tribunals in Nuremberg, Dr. John H. E. Fried has been designated to represent the Tribunals in preparing for publication a record of the twelve American trials, and for the purpose has been assigned to the Department of the Army.

On leave from Bennington College, Dr. Max M. Kampelman is now on the staff of Senator Hubert H. Humphrey of Minnesota as legislative counsel.

Mr. Ralph Purcell, nearing completion of his graduate work at the University of Wisconsin, has been appointed to an assistant professorship at Emory University.

Dr. Carl Leiden, Jr., who received a doctor's degree at the State University of Iowa in February, has resigned his instructorship there in order to accept an assistant professorship at Marshall College.

Mr. Elsworth P. Woods, half-time instructor at the State University of Iowa, expects to receive his doctor's degree in June and has been appointed assistant professor at Western Michigan College of Education.

Dr. Karl A. Bosworth, formerly of Western Reserve University, is now

an associate professor in the department of government and international relations at the University of Connecticut, and Miss Gertrude Houser, formerly of Boston University, has been appointed instructor.

Since returning from a year of research in Europe, Mr. Frederick H. Hartmann, former graduate student at Princeton University, has joined the faculty of the University of Florida as assistant professor.

At the Newark College of Arts and Sciences of Rutgers University, Mr. Donald E. J. MacNamara has taken over the work in comparative government and world politics formerly handled by Dr. Donald Mitchell, who has been granted a leave of absence. Mr. MacNamara recently completed a six-year tour of duty as a military police officer.

Mr. Maximilian Koessler, who from January, 1946, to January, 1947, was attached as an attorney to the War Crimes Group of the United States Army in Germany, and later served as an attorney with the office of the Chief of Counsel for War Crimes in Nuremberg, has recently been transferred as an attorney to the legal division of Military Government for Bavaria in Munich.

Professor John B. Whitton, of Princeton University, lectured in July, 1948, at the Academy of International Law at the Hague on "Propaganda and International Law," and later in the year on the same subject at the Graduate Institute of International Studies at Geneva. In January, 1949, also, he gave the inaugural lecture at the opening of the Center of International Studies at the University of Aix-Marseilles at Aix-en-Provence.

After a year's leave, Professor William Ebenstein resumed his teaching duties at Princeton University at the beginning of February. He spent most of the year with UNESCO in Paris, where he was in charge of the project known as "Methods in Political Science." In this connection, he organized an international conference of political scientists in Paris (September 13–16, 1948) and assisted in the setting up of a Preparatory Committee of the projected International Political Science Association.

A number of community town meetings, sponsored by the Foreign Policy Association, the League of Women Voters, and the United Nations Council of Philadelphia were held in the Philadelphia area during February, March, and April, with Drs. Robert Strausz-Hupé, Donald Harter, Philip Jacob, and Edgar B. Cale, of the University of Pennsylvania, among the participants.

Dr. Donald C. Blaisdell has been given leave of absence as special adviser in the Office of United Nations Affairs in the Department of State in order to spend the present semester at the University of Illinois as visiting

professor. He served as executive officer of the United States delegation to the recent General Assembly in Paris, and at the University of Illinois is teaching courses on international organization and American foreign policy.

The John Randolph Haynes and Dora Haynes Foundation of Los Angeles has created an annual lectureship in the fields of government, public law, economics, and sociology, to be allocated to the colleges and universities in the Los Angeles area. This year the University of California at Los Angeles invited Dr. Harold G. Moulton, of the Brookings Institution, to deliver a series of lectures in April on "The State of the American Economy." The Foundation has also created three fellowships of $2,000 each in the fields named, to be awarded to students in California institutions engaged upon their doctoral dissertations.

An Institute for Annual Review of United Nations Affairs will be conducted on July 21, 22, and 23 of this year by the Program in United Nations and World Affairs at New York University. United Nations officials or others having expert knowledge of particular activities of UN will present the topics; a small staff of experts will lead critical discussions, and participation by members will be expected. Professor Clyde Eagleton is director.

In addition to Mr. Arthur Flemming, former Civil Service Commissioner and now president of Ohio Wesleyan University, and Professor James K. Pollock of the University of Michigan, both of whom were members of the Commission on Organization of the Executive Branch of the Government, the following political scientists assisted with the work of the Commission or of its Task Forces: Charles Aikin, William Anderson, Lawrence Appleby, Stephen K. Bailey, Frank Bane, A. E. Buck, Robert H. Connery, Rowland Egger, Hugh Elsbree, Rupert Emerson, Charles Fairman, James W. Fesler, Russell Forbes, Irving K. Fox, John M. Gaus, George Graham, Brooke Graves, Ernest S. Griffith, Ferrel Heady, Howard M. Kline, Charles McKinley, Lewis Meriam, John D. Millett, Robert Moses, William Pincus, Don K. Price, C. Herman Pritchett, H. P. Seidemann, and Leonard D. White.

Dr. Lewis B. Sims, who last summer was detailed to the Hoover Commission from his position as assistant chief of the Governments Division of the Census Bureau, has transferred to the Public Health Service to work on problems of general administration and federal-state-local relations in the field of environmental health.

Mr. James R. Watson has been appointed executive director of the National Civil Service League and the New York Civil Service Reform

Association, succeeding Mr. H. Eliot Kaplan, who resigned to become deputy comptroller of the state of New York. Mr. Watson was formerly professor of public administration and director of the public administration program at the University of Puerto Rico, and more recently served for six months as associate professor at Western Reserve University.

Late in November, Northwestern University's department of political science acted as host at a gathering of teachers of political science in the Chicago area. The meeting, addressed by Dr. Jack Isakoff of the Illinois State Legislative Council, was the second in a series. The first was sponsored by the political scientists of Roosevelt College.

During the winter and spring quarters of 1949, the Laboratory for Research in Social Relations at the University of Minnesota, in which the department of political science participates, is conducting a series of conferences on problems of interdisciplinary research. Visiting scholars taking part include R. Nevitt Sanford, Rensis Likert, Clyde Kluckhohn, Harold D. Lasswell, Carroll L. Shartle, Robert R. Sears, Urie Bronfenbrenner, John Dollard, Samuel A. Stouffer, and Paul F. Lazarsfeld.

A one-day institute on the American political party system and party responsibility in California was held at the University of California (Berkeley) on December 13, 1948, under the sponsorship of the departments of political science, history, economics, sociology and social institutions, journalism, the Institute of Industrial Relations, and the department of institutes, University Extension Division. Approximately 175 were in attendance—including newspaper editors, representatives of labor, civic leaders, political figures, and leading political scientists of California.

During the coming summer, the Social Science Foundation at the University of Denver is offering two special opportunities for the study of Russian affairs. One is to be a five-week course, two hours a day, to be presented by Professors Geroid T. Robinson, John N. Hazard, Abram Bergson, and Philip E. Moseley, all of the Russian Institute at Columbia University, as a regular Summer School program for all interested students. The other is to be an intensive two-week seminar to be presented by the same scholars for the benefit of newspaper, radio, and business men, and other professionals or laymen of the Mountain-Plains Region who may be interested in increasing their background of knowledge concerning conditions in and activities of the Soviet Union. The coördinator of the institute will be C. Dale Fuller, professor of international relations at the University of Denver, now on leave doing advanced work at the Russian Institute, Columbia University, and lecturer in government at Barnard College.

The symposium on the writing of judicial biography which occupied the round-table on public law at the last annual meeting of the American Political Science Association is scheduled for publication in the spring issue of the *Indiana Law Journal.* Participants were Professors Carl B. Swisher of Johns Hopkins University, Willard Hurst of the University of Wisconsin Law school, John P. Frank of the Indiana University School of Law, Arnaud B. Leavelle of Stanford University, Lynford A. Lardner, of Northwestern University, and Mr. Willard L. King, of the Chicago bar. Professor Charles Fairman, who served as chairman, will contribute an introduction. The spring issue may be purchased for $1.00; orders will be received by the *Journal,* reaching Bloomington preferably by April 15.

With the coöperation of the American Political Science Association, the American University will hold the Third Annual Institute for Teachers of Government and Administration in Washington, D. C., from June 12 to June 25. Conferences are scheduled with officials of the federal legislative, judicial, and executive branches, with Washington newsmen, and with other leaders on the national scene. Informal discussions will give the participants an opportunity to obtain background information and up-to-date facts which can be taken back to the college classroom and to teaching colleagues. Special opportunities will be offered also to explore research resources in international relations, public administration, and other governmental fields. Members of the advisory committee which has planned the Institute include Marshall E. Dimock, Hugh L. Elsbree, James W. Fesler, Harold F. Gosnell, Ernest S. Griffith, Pitman B. Potter, Catheryn Seckler-Hudson, Francis O. Wilcox, and Lowell H. Hattery. Advance registrants for the 1949 Institute include representatives from sixteen institutions.

The 1949 National Citizens Conference on Community Planning was held in Oklahoma City March 27–30, with topics for discussion including immediate and future traffic conditions on streets and highways; benefits of planning to business firms through improved tax structure and better community facilities; need for control of land use and developments outside corporate limits to provide for attractive and orderly growth and to avoid excessive future maintenance costs to the community; need and means for active citizen participation in making and carrying out plans; protection to property values through zoning and other land-use controls; effects of planning upon the location of new industries; rebuilding under late urban redevelopment laws; waste of public money by failure of communities to anticipate future needs; the need for community planning in towns of less than 10,000 population; and conservation of natural resources, with particular emphasis upon the problem of dwindling water

resources and the need for a more aggressive soil conservation program by individuals and organizations.

During the first term of the coming summer session at the University of Denver, the School of Public Administration, and the Division of the Social Sciences will present an Institute on International Administration, including a lecture course and a seminar in a field in which instruction has been notably lacking, but which is of ever-increasing importance. The program will be under the direction of Albert H. Rosenthal, director of the School of Public Administration and former assistant director, UNESCO Relations Staff, Department of State. A number of recognized leaders in the field of international organization, both from the United States and from other countries, will participate. There will be detailed study of such important aspects of international administration as concepts of international administration, administrative problems in the development of the United Nations and its specialized agencies, administrative problems in the U. S. Foreign Service, and the relations of international administration and American foreign policy.

Operating under grants-in-aid from the Rockefeller Foundation, and in coöperation with the Library of Congress, five trained librarians have been cataloguing the States Member (non-sale) documents in the Woodrow Wilson Memorial Library's League of Nations Collection—the only complete set of French and English documentation of the League in this country now available to the public. The cataloguing of the voluminous section dealing with political questions was completed at the end of 1948, and printed L. C. cards are now beginning to reach depository catalogues throughout the country. Of particular interest to political scientists and historians should be the cards for the more than 670 documents on the Japanese invasions of China in 1931 and 1937, the Italo-Ethiopian dispute, the Bolivia-Paraguay dispute, and the Spanish civil war.

At Columbia University, a recently established office of the University Committee on the United Nations facilitates and arranges student and faculty contacts with Secretariat officials in connection with individual research projects. It maintains a documentary and bibliographical service, which endeavors to keep current files of materials from the United Nations and the specialized agencies, as well as an information service on the activities of those organizations. It arranges trips to Lake Success, and helps obtain speakers for campus groups or classes and seminars. It assists the student United Nations Council in its activities, including radio programs, luncheons, debates, and round tables. It maintains an information service about the interneship programs at Lake Success and in the special-

ized agencies, and it arranges for free distribution of available United Nations pamphlets. Also, it procures documentary films and film strips for use in class rooms, and has a photographic file. Finally, the Office produces a bulletin mailed to over two hundred individuals at Columbia and other institutions and endeavors to keep them informed on U. N. services and publications available for teaching, as well as current developments in the international field. As an experiment in stimulating interest in international affairs, and thus aiding a large and complicated educational institution better to fulfill its functions, the Office constantly seeks suggestions as to how its services may be improved and in what ways other groups and universities may make use of them.

BOOK REVIEWS AND NOTICES

The Second World War: Vol. I, *The Gathering Storm*. By Winston S. Churchill. (Boston: Houghton Mifflin Company. 1948. Pp. xvi, 784. $6.00.)

That American university teaching and research in international relations in the 1930's dealt with essentially irrelevant materials is dramatically illustrated by Mr. Churchill's book. It was, for example, as late as the Munich crisis that this reviewer finally came to understand that "security" was the key word in the phrase "collective security."

For a decade and in the face of mounting evidence to the contrary, men of good will in Britain and America continued to teach and to preach that if nations would only be "collective" enough the security would take care of itself. It thus became possible for them to scold the British and French governments for their weak support of the League of Nations, without following through by calling for the rigorous rearmament which would have given some point to a firm policy at Geneva.

Mr. Churchill was one who did not mistake the incense-burner of collective security for the God who is proverbially on the side of the big battalions. In the language of Gibbon and Macaulay, he describes the fall of Britain and France from the unchallengeable security of the 1920's to the pathetic capitulation of 1938. Gibbon's Rome took centuries to decline, Churchill's Britain less than a decade.

It is now clear that the fatal steps were taken long before 1938. It was especially the loss of air parity in 1934 and 1935 which spelled the doom of the Versailles order. (It was also, of course, what Churchill calls "the improvident aloofness of American foreign policy.)

Everyone agrees that Anglo-French diplomacy in the 1930's followed a disastrous course. They are in less agreement as to exactly what was wrong. Mr. Churchill is not backward in suggesting that he knew what was wrong even at the time. He communicates his sense of impending disaster by quoting (p. 123) from a volume of *Punch* cartoons:

> "And the signals flash through the night in vain,
> For Death is in charge of the clattering train."

It was a failure of both intelligence and morality. He cites Baldwin's November, 1934, declaration on air power that Britain would in a year's time "still have a margin in Europe alone of nearly fifty per cent" (p. 119). By the following May, when the damage had been done and Germany had not only achieved air parity but was far outdistancing Great Britain, Baldwin was saying: "We were completely misled on that subject." So much for the failure of intelligence.

In November, 1936, Baldwin replied to a Churchillian philippic by saying that had the Conservative party gone to the polls asking for a mandate for rearmament, " I cannot think of anything that would have made the loss of the election from my point of view more certain." Britain must not look to her security or the Conservative party might lose an election: "This was indeed appalling frankness. It carried naked truth about his motives into indecency (p. 216)." So much for the failure of morality. Churchill suggests that only the "woman I love" abdication crisis saved Baldwin from the consequences of this craven disclosure.

With a fine partisan impartiality, Churchill quotes Prime Minister Atlee's statement as Opposition leader in the critical rearmament debates of 1934–36 just often enough so that Churchill's account of Conservative failure will give Atlee and the Labour party no comfort. Thus, Atlee declared at one point: "We decry the proposition that an increased British air force will make for the peace of the world (p. 114)."

This first volume of Churchill's memoirs dealing with the Second World War carries the story to the moment at which Churchill was asked to form a National Government to succeed Chamberlain. The account of Churchill's management of the Admiralty during the period of "the twilight war" illustrates how much a knowledgeable politician can do at the head of a great defense department. Democracies unfortunately seem to be in need of more rather than less of the type of politician who, like Churchill, has the talent and the sense of responsibility to master the intellectually difficult problems of defense. Even more critical is the need for men who can see danger ahead, and, like Churchill, prescribe for the crisis while his political competitors are still jockeying for position by demagogic appeal to man's natural sentiments for peace.

WILLIAM T. R. FOX.

Yale University.

The World Community. EDITED BY QUINCY WRIGHT. (Chicago: University of Chicago Press. 1948. Pp. x, 323. $5.00.)

Last Chance. EDITED BY CLARA URQUHART. (Boston: The Beacon Press. 1948. Pp. viii, 182. $2.50.)

The first of these books is a record of the proceedings of a conference of more than forty scholars, mainly social scientists, on the theme indicated by the title. It includes a preliminary memorandum, formal papers submitted by Louis Wirth, Margaret Mead, Kenneth E. Boulding, Robert G. Angell, Harold D. Lasswell, and Pitman B. Potter, and a carefully edited record of discussions on each paper. The Norman Wait Harris Memorial Foundation sponsored the conference in the spring of 1947.

The book reflects the abstract and theoretical plane on which the conference proceeded. There is no analysis of the extent to which the world

is a community (or a society) and little treatment of concrete steps that might be taken to make it a more perfect community; neither is there much pointed discussion of the attributes of a more perfect community. Both the Communists and UNESCO are in their own ways working for the development of a world community. Should one program be supported and the other opposed? Why? How? Or are scholars unconcerned with values and interested only in measuring trends or serving as technicians who will advise any political leader how to get what he wants?

There is, of course, some recognition of these problems. Margaret Mead assumed the desirability of "one world" and suggested that it is achievable, not through the promotion of uniform culture, but through the adoption of over-all values (unspecified) which permit great cultural diversity. Mr. Boulding emphasized the necessity of avoiding drastic deflations, especially in the United States, if international economic contacts are to contribute to the development of a world community; he obviously had barred the thought of a Communist world. Mr. Angell wanted international communication so conducted as to emphasize "common human qualities" and the development of a sense of world-wide fellowship in man. Mr. Lasswell, with his customary combination of precision and abstruseness, analyzed the factors affecting "world loyalty" and urged the need for continuous world attention and world attitude surveys as guides to statesmanship. Mr. Potter struck back at criticisms of the institutional approach by pointing to the rôle which institutions often play in promoting social solidarity and by claiming that the "most serious" contemporary efforts to promote a world community involve the creation of new institutions. The discussion of Mr. Potter's paper, as he himself forecast, came closest to pulling the conference down from the sublime to the meticulous.

Two incidental comments might be made. First, the opening parts of the book are marred by successive reversals in the definitions of the terms community and society. This is clearly a case where uniformity is preferable to diversity, and perhaps the thoughtful clarification of the terms by Mr. Wirth may assist others who deal with them. Second, the discussion of Mr. Boulding's paper is especially worth reading because of the sparkling and provocative (though sometimes irrelevant) observations which he made. Readers of this journal may derive comfort from an economist who declares that he will have to become a political scientist in order to be of any use to anyone, but they should note the statement, "I can't find anything in political science that corresponds to the kind of ferment and excitement and interest that is going on in economics."

The second book is markedly inferior. The editor's background lies in the field of juvenile delinquency and recidivism, supplemented by wartime assignments to humanitarian work. Seeking solutions to eleven prob-

lems, including the avoidance of war and the elimination of want, she thought of asking for contributions from "politicians, economists, and sociologists," but gave them up because she knew of none who employed a "profoundly objective and ethical approach." Likewise failing to locate "great religious apostles," she turned to twenty-six "men of thought and vision . . . philosophers, writers, scientists," requesting them to write brief answers to each of the eleven questions. The result is a series of generalities, among which calls for moral and spiritual regeneration are prominent. Some relief is offered, however, by Benedetto Croce, who found fundamental weakness in the formulation of the project; by Trygve Lie, who refused to concoct a new definition of democracy that would reflect both Eastern and Western conceptions; and by Karl Vossler, who answered one question by saying, "I do not know."

VERNON VAN DYKE.

Yale University.

The United States in World Affairs, 1947–1949. By JOHN C. CAMPBELL AND THE RESEARCH STAFF OF THE COUNCIL ON FOREIGN RELATIONS. With an Introduction by Dean Acheson. (New York: Harper and Brothers. 1948. Pp. xvi, 572. $5.00.)

With this second postwar volume of what has been a long and distinguished series, something of a milestone has been passed. It is twenty years and fifteen volumes ago that the Council on Foreign Relations inaugurated its annual *Survey of American Foreign Relations*, which after four years of publication gave way to the present series. Since then, except for the war years following Pearl Harbor (to be covered in a separate study), these scholarly reviews of recent foreign relations, all but two devoted to a year's events, have continued to appear. With this volume, then, an important part of the Council's service to the public enters upon its third decade.

In the year under review, the American people passed a milestone, or, as Mr. Campbell prefers, a landmark, in the conduct of their foreign relations. They have come a long way since, two decades ago, Mr. Howland, the then editor, found them "perplexed and uneasy" over "the unaccustomed anxieties and responsibilities which our new position as a World Power is thrusting upon us" (*American Foreign Relations, 1928*, p. 23). Nevertheless, only two years ago John Foster Dulles, in his introduction to the first volume prepared under Mr. Campbell's direction, had to confess that the United States was then still "feeling its way toward a foreign policy commensurate with its present position in the world" (*The United States in World Affairs, 1945–1947*, p. ix.) Now suddenly all that is changed. Uncertainly with the proclamation of the Truman Doctrine in March, 1947, more confidently with Marshall's Harvard address in June, and boldly with the adoption of the Foreign Assistance Act in April,

1948, this country for the first time since the brash and bully days of Theodore Roosevelt seized in peacetime the initiative in world affairs which for a generation it would exercise only under the impulse of war.

The Introduction of this second of Mr. Campbell's volumes is written by Dean Acheson. What he has to say about the present crisis, Russia's policy, and the future course of the United States (whose "help . . . cannot be restricted to the economic field," p. xii) takes on a new importance since his appointment as Secretary of State.

Fourteen chapters make up the body of the book, to which have been appended a world events chronology for 1947 and a bibliography, both divided into sections according to geographical areas and special topics. A particularly happy combination of the chronological and topical approaches has been achieved.

The early chapters describe the world situation as it was in the spring of 1947 when American resistance to Russia's "ruin and rule" policy took shape in the Truman-Marshall program. Separate chapters then tell of the repercussions in Germany, Latin America, and the Far East. These are followed by a chapter on trade policy and one, reminiscent of the Howland volumes, which discusses progress in international civil aviation without confining the story to the year's developments. Three more chapters are devoted to American (and Russian) activities in the United Nations. Then, in the last part of the book, the world picture during the rest of the year is taken up: Western Europe's acceptance of the American program, Russia's consolidation of her position in eastern Europe, and finally the passage of the ERP.

Whatever the detail, the total picture is one of a vigorous policy slowly but unmistakably unfolding. Though we know there was to be backsliding soon after, it is almost exhilarating to be able to conclude with Mr. Campbell (p. 480) that by the spring of 1948 the United States at last was acting with "a purposeful strategy" becoming to its world position these twenty years and more.

JAMES T. WATKINS, IV.

Stanford University.

The United States and South America; The Northern Republics. By ARTHUR P. WHITAKER. (Cambridge, Mass.: Harvard University Press. 1948. Pp. xix, 280. $3.50.)

The title of this excellent study of the Bolivarian republics by Professor Arthur P. Whitaker is inaccurate and misleading. However, this is not the author's fault, inasmuch as the volume is one of a series edited by Sumner Welles covering the foreign relations of the United States with different countries and areas of the world, and it conforms to the requirements of the series. In fact, the relations of the five northern republics—Bolivia,

Peru, Ecuador, Colombia, and Venezuela—with the United States are given less consideration than the internal developments and the political and social problems which have faced these countries in the last decade.

It is a difficult feat—almost a *tour de force*—to relate the political developments and international relations of a region embracing five heterogeneous states. However, Professor Whitaker has managed to achieve a logical and interesting survey which not only covers the recent developments in some detail but also brings out the essential background features essential to their understanding. The author is objective and penetrating, and does not hesitate to criticize the United States when occasion warrants. He finds that a "heavy sediment of mistrust and misunderstanding" still remains to cloud the relations between the United States and these republics; but he is not hopeless of a solution. Although the United States labors under a cultural handicap in these countries, Professor Whitaker points out that we have one great advantage, namely, our superiority and prestige in the fields of science and technology. By encouraging an influx of students in these fields, an entering wedge for broader cultural understanding may be achieved. It is vitally essential that intellectual comprehension accompany our economic, financial, and military assistance if the foundations of mutual good will are to be solid and permanent.

Professor Whitaker is well equipped by study and experience to develop the thesis that he has attempted, and his study is a valuable one for anyone interested either in the recent internal, political, or social developments in this region or in its international relations. In these days when the problem of security is troubling the entire world, the United States must pay particular attention to those neighbors who furnish the sinews of war and serve as bastions of defense for the Panama Canal. A carefully selected reading list adds to the value of the volume.

GRAHAM H. STUART.

Stanford University.

Mandates, Dependencies, and Trusteeships. By H. DUNCAN HALL. (Washington, D.C.: Carnegie Endowment for International Peace. 1948. Pp. xvi, 429. $5.00.)

As the preface says, "a small segment of the great wheel of international affairs is studied here in some detail." The segment is the mandates system, carried on briefly into its successor, the trusteeship system of the United Nations. The study is related to the "international frontier," which would appear to be a new name for what used to be called "power politics." The international frontier is formed by the zones where great-power interests conflict; and the areas in which mandates are created are such zones. This, more than humanitarianism, is the explanation of mandates; they are a phenomenon of the international frontier (pp. 8, 15).

It would have been a fatal mistake (p. 31) to determine in the Covenant the areas to which the mandate principles should apply. Responsibility for these areas must be voluntarily surrendered, and voluntarily assumed. A state cannot be expected to surrender a portion of its territory to international trusteeship unless (1) the interests of the people therein would be as well served, (2) the security of the state would not be impaired, (3) the United Nations were able to assume the responsibility and contribute to peace (p. 25). These conditions did not exist; individual trusteeship was therefore preferable to an international one (pp. 25, 125).

In Part I, containing seven brief chapters, a general view of the mandates system is taken. The idea of extending the system to all dependencies was known in 1919, but dropped as too controversial. As to the areas actually put under mandate administration, Mr. Hall thinks that both the League and the mandatory powers sincerely accepted their obligations and carried them out well enough to make the system work (p. 44). The statement of principles was more important than their actual application, though the Mandates Commission was uniquely successful. Experience shows that the principle of native welfare was accepted, but that the concepts of non-fortification, nationality, and ultimate independence were rejected (pp. 65, 66).

Part II ("Background and Perspective") names four sources of the mandates system: the balance of power conflicts, the concepts of self-government and of trusteeship, and the principle of collective responsibility. In Part III, a great deal of light is thrown upon the creation of the system and upon the details of its working.

During the Second War, the mandated areas were treated as belligerent territory, a sort of final evidence that sovereignty over these territories did not belong to the League. The "A" mandates (excepting Palestine) became independent. As to other mandates, the League died without a testament: "either title expired with the League or there never had been any League title." Nor does sovereignty reside in the United Nations. The mandatory powers remained in possession, but to leave matters further unclear, the mandatory powers, in making their trust agreements, put forward no claim to full sovereignty over the trust areas.

This is another of the monographs in the series of Studies in the Administration of International Law and Organization issued by the Carnegie Endowment. It is an excellent addition, careful, compact, and thorough, with much new material and much critical interpretation.

CLYDE EAGLETON.

New York University.

The Law and Custom of the Sea. By HERBERT A. SMITH. (London: Stevens and Sons, Ltd. 1948. Pp. x, 193. 12/6. Published under the auspices of the London Institute of World Affairs).

Students of international affairs have long been accustomed to look to the works of Professor Smith, of the University of London, for authentic interpretations of British practice regarding international law. Now comes a volume containing the essence of the international law of the sea. Weight is lent to the compact analysis of this controversial phase of the law of nations by virtue of the fact that for many years the author has been legal adviser to the Admiralty. Professor Smith disclaims any pretense of offering an official pronouncement, and is careful not to quote from other than widely available sources. However, no reader will overlook the point that the book is addressed to officers of the Royal Navy and Merchant Marine for their practical guidance and grows out of the lectures which he has given in the past at the Naval College.

The book deals with the problems both of peace and of war. Among the topics included are the divisions of the sea, maritime jurisdiction, status of the laws of war, ships in wartime, methods of naval combat, war zones, capture and seizure, blockade and contraband of war, enemy property, retaliation, neutral waters, and aircraft at sea.

As might be expected, the author prefers the double-radius rule to the American supported headland theory in determining maritime jurisdiction along the sinuosities of coasts. He believes that this will avert many of the difficulties which arise over the jurisdiction concerning bays. And he indicates that the present settled policy of the London government is to seek "narrowing to the utmost all claims for extension of internal or external waters" beyond those traditionally held. Notwithstanding this attitude, Professor Smith says that under the present conditions of international law it must be anticipated that nations will seek to extend their rule over marginal waters beyond the three-mile limit for fiscal, sanitary, and security reasons. And so long as these are reasonable, they will be examined realistically by others, even though formal protests for the record may be lodged. American readers will be disappointed not to find a critique of the developments which have occurred in recent years concerning the Alaskan fisheries or the utilization of resources found in the continental shelf.

Professor Smith's discussion of the questions arising in connection with war falls short of what one would like to have from one who has been so close to the British Admiralty. Little is revealed that is not already well known. Little space is devoted to situations arising specifically in World War II. Indeed, the events of World War II receive only very generalized comment.

The treatment of the law in war is tinctured with the pessimism which was so evident in Professor Smith's previous book, *The Crisis in the Law of Nations*. "If the authority of the law," he writes, "has been badly shaken today, it is because the foundations upon which it was built have been

deliberately undermined by vast movements of popular thought which are openly hostile to the long accepted standards of Western civilization. It must continue to be weak until those standards are restored." In another place the author reveals the foreboding thoughts which run through his mind as a result of the coming of the atomic bomb: "In the two tremenduous blows of instantaneous annihilation which brought the war to an end, it seemed to many that the reign of law between nations had at last come to an end."

Valuable as is Professor Smith's distillation of the law and practice of the past—and this is not to be minimized by what is now to be said—one lays down the volume wishing that it might have gone on to give officers of state and students of the law more concrete suggestions on how some of the great problems confronting us might be tackled in the light of existing circumstances. Unfortunately, Professor Smith does not mention or explore the implications of the American proposals for the international control of atomic energy, or the deliberations of the United Nations bodies on the use of weapons of mass destruction, limitation of armaments, and the security provisions of the Charter.

NORMAN J. PADELFORD.

Massachusetts Institute of Technology.

The Control of Atomic Energy; A Study of Its Social, Economic, and Political Implications. By JAMES R. NEWMAN AND BYRON S. MILLER. (New York: McGraw-Hill Book Company. 1948. Pp. xiii, 434. $5.00.)

One of the comments on this revolutionary decade is the fact that perhaps the most drastic and significant permanent change in the rôle of government has been almost unnoticed by writers. The great attention given to the atomic bomb is at the expense of attention that might be given to the creation and practice of control by government, for the first time in world history, of a newly discovered source of energy.

James R. Newman and Bryon S. Miller have changed this condition to a degree with their acute analysis of the Atomic Energy Act, which is the beginning legislation in this new function. Both are lawyers, Mr. Newman the former counsel to the Senate Committee on Atomic Energy and now a journalist who is articulate in the general field of science. Their book is thorough without being over-burdened with detail, calm in its presentation of facts that could have been made theatrical, and clear in its analysis for laymen of data that could have been difficult. It covers the various aspects of the controls established, and it also presents concise comment on the nature of scientific research. About one-third of the space is filled with appendices, including the Atomic Energy Act, the Espionage Act of 1917 and its legislative history and scope, the British Atomic Energy Act of 1946, and a technical paper on the development and application of atomic

energy by Edward U. Condon, scientific adviser to the Senate Special Committee on Atomic Energy.

Three dominant impressions are left by the analysis. The first is the desperate groping of the nation in this field. It seems certain that parts of the present act will fail, if they do not damage the future potential of the nation and the world, while other parts reflect a striking boldness on the part of lawmakers who were willing to break with past forms. The second is the increasing administrative control—and responsibility—over scientific research and information. In all aspects of atomic research, just as increasingly in all other fields including the social studies, the executive officials who administer the legal controls or the funds to be allotted have the power to determine the nature of research. If these administrators do not place value on the work of the quiet individual who pursues the eccentric idea, only the most stalwart individual will be able to withstand the lure of comfortable funds and prestige. The third emergent point is the great amount of discretion exercised by the Atomic Energy Commission, even despite the extent to which the act makes detailed provisions. This means, of course, that the Commission must be as sensitive politically as Congress itself or the President, not in the sense of representing party views, but certainly in the sense of watching public opinion as it responds to the various propagandas that affect it.

If one single conclusion can be cited, it is that the provisions for secrecy in the act are more than unrealistic; they are potentially dangerous. After quoting the offenses and punishments under control of information, the authors conclude: "The draconic sweep of these penalities reveals Congress's obsession with the safeguarding of secrets. These unprecedented provisions, which prescribe the death penalty in peacetime even for such as 'mutilating' any 'sketch' relating to atomic energy research partially financed by federal funds, can be ascribed only to superstitious dread. . . . Preoccupation with the 'secret,' instead of with the thing itself, will stifle the scientific research from which our real strength is derived, will strengthen the pernicious misconception that we have a monopoly of knowledge in the science of atomic energy, and will beguile us into embracing the fatal fallacy that we can achieve security for ourselves by keeping our knowledge from others."

JAMES L. MCCAMY.

University of Wisconsin.

Overseas Information Service of the United States Government. BY CHARLES A. H. THOMSON. (Washington, D.C.: The Brookings Institution. 1948. Pp. xii, 397. $4.00.)

As the author quite properly emphasizes, "the problem of overseas

government information service is most clearly seen as a part of the revolutionary development of the world rôle of the United States" (p. 363). During this expansion, the executive agencies experienced much confusion, numerous reorganizations, personality conflicts, and jurisdictional disputes, as, indeed, the Bureau of the Budget's own study, *The United States at War* (Washington, D. C., 1946) indicates. The information program suffered from these same growing pains, for it likewise was hampered by lack of experience, frequent reorganizations, personal rivalry, and sharp criticism. Since the historical development of the information program is essential to an understanding of its current problems, the author devotes the bulk of his study to an account of this service, from its modest beginning prior to Pearl Harbor through its wartime expansion to its adjustment to postwar conditions.

By virtue of his experience in psychological warfare and his research under the auspices of the Brookings Institution, the author is ably equipped to undertake such a study. His approach is primarily organizational, for he is interested in the machinery developed to establish information policy and in the administrative problems encountered in carrying the policy into effect. In the course of his survey, he discusses in considerable detail the Office of War Information, the Office of the Coördinator of Inter-American Affairs, the psychological warfare units of the armed forces, information control in occupied territories, and the information program of the Department of State. Since the field of his inquiry is broad, the author does not have sufficient space for many illustrations of actual information operations. For these the reader must turn to such works as Wallace Carroll, *Persuade or Perish* (Boston, 1948), Paul M. A. Linebarger, *Psychological Warfare* (Washington, D.C., 1948), or James P. Warburg, *Unwritten Treaty* (New York, 1946).

The concluding section deals with the present problems of overseas information. Since the author believes that the United States should actively support its national objectives by overseas information, he does not think that the basic issue is whether or not to continue the current program. Instead, he believes that the main problem is how best to use the various facilities available. He therefore makes a series of specific recommendations designed to strengthen the program in the fields of policy, operations, organization, and congressional relations.

While it is possible to point to certain limitations in this study—prosaic style, over-organization, and a few errors in fact—it is much more important to appreciate its contributions. It is the first over-all survey of the overseas information service; it is an important work of administrative history and analysis; it contains a sound discussion of the problems and issues in the present information program; and it makes a series of considered recommendations as to the improvement of this service. Any one

of these would make the book worth reading; together, they make it worth serious study.

FRED L. HADSEL.

George Washington University.

Socialist Britain; Its Background, Its Present, and An Estimate of Its Future. BY FRANCIS WILLIAMS. (New York: The Viking Press. 1949. Pp. 278. $3.00.)

Mr. Francis Williams, formerly adviser on public relations to Prime Minister Attlee, presents the most comprehensive account thus far of the problems and policies of the British Labor Government. Obviously, Mr. Williams himself is an ardent admirer and supporter of the British Labor party; nevertheless, this predilection does not blind him to the difficulties as well as the shortcomings of the socialist experiment. What gives this experiment its special importance, according to the author, is the "triple character" of what is being attempted. In the first place, socialist theories are for the first time being given a practical test in an industrial society which occupies a key position in the economy of the Western world. Secondly, an attempt is being made to reshape the pattern of British imperialism to secure for Britain her position as a world power in circumstances of incomparable difficulty. And finally, this experiment is being carried out at a time when Britain's economic difficulties are so great as to threaten her chance of economic survival, and in political and international circumstances that have substantially restricted her freedom of diplomatic maneuvre. It is in the light of these incomparable difficulties that Mr. Williams views the achievements of the socialist experiment.

The two basic assumptions upon which his "case for socialism" rests are that a planned socialist system is economically more efficient than a private enterprise capitalist system; and that within democratic socialist planning the individual can be given broader social justice, greater security, and more complete freedom than under capitalism. On the basis of the first assumption, the Labor Government has put into operation a whole body of "permanent" economic controls—central planning, nationalized industries, agricultural development, etc—that are meant to become "settled instruments"of a planned socialist economy, and are to be distinguished from such temporary expedients as price control and rationing, which will come to an end when the conditions producing them come to an end. As evidence of the validity of the first assumption, Mr. Williams cites the fact that despite all obstacles—shortages of material, war damages, the 1947 winter of snow, frosts, and floods— "British industry, by mid-1948, had reached the highest level of aggregate output and the greatest volume of export trade in its history." The second assumption has led the Labor Government to undertake a vast program of social services—

national health service, national insurance, housing, town and country planning, extension of educational opportunities—"designed to complement the egalitarian consequences of budget policy."

Thus the primary importance of the socialist experiment is that it is an attempt to provide the British people with both security and freedom. What of freedom? Mr. Williams replies: "True freedom for the individual can be preserved and extended only if the age-old problem of taming power is widened to cover both political and economic power: if the democratic control of political policy is extended to include the democratic control of economic policy by the state while the concentration of economic power in the hands of the political executive which this involves is constantly curbed and tamed by the processes of political democracy."

In the international sphere, Britain, according to the author, is still a a great power "capable of influencing the development of world history to the common advantage of all peace-loving nations." This influence must be exercised in the direction of preventing Soviet aggression by an Anglo-American association and a closely integrated British Commonwealth-Western European organization which will, at the same time, persuade Russia that if her intentions are pacific the road to coöperation is open. However, Britain must also avoid becoming "the junior partner of the greatest capitalist power on earth." Her rôle in the development of world history is to serve as a counter-attraction to both American capitalism and Soviet communism.

ELAINE WINDRICH.

Stanford University.

The Politics of Equality; New Zealand's Adventures in Democracy. BY LESLIE LIPSON. (Chicago: University of Chicago Press. 1948. Pp. xiv, 520. $6.00.)

This volume is both a full length, critical study of the politics and administration of New Zealand and an important contribution to comparative government. Having served for eight years as professor of political science in the University of New Zealand, Mr. Lipson writes with an intimate knowledge of the democracy which is the focus of his study. He is also thoroughly familiar with the political institutions of Britain, Australia, and the United States.

A brief introduction describes the geography, social structure, and economy of New Zealand and discusses the spirit of its democracy, in which the emphasis has been upon "equality" rather than "liberty." Approaching his subject first historically and then analytically, the author divides the book into two parts: "Democracy in Evolution, 1840–90," and "Democracy in Operation, 1891–1947." Responsible self-government was achieved in 1856, but between 1856 and 1890 many important

features of the original framework were altered: federalism was abandoned for a unitary state; the powers of the governor were absorbed by the premier and the cabinet; the more representative lower house of the legislature gradually established its ascendancy over the Legislative Council. During the early nineties, many of these trends reached a decisive climax, and in 1893 the principle of "one man, one vote"was carried to its logical fulfillment when women were granted equal voting rights. The period of "evolution" was over.

During the last half-century, New Zealand has been a "matured democracy," boldly pioneering in social reform. Thus the "economics of socialism" has been fused with the "politics of democracy." The second part of the volume analyzes the effect of this matured democracy upon the parties, parliament, the cabinet, and the administration. Although the author finds much to commend, the total picture is far from utopian. He stresses the growth of the modern party system and the increasingly tight discipline, especially within the Labor party; the tendency of the majority party caucus to evolve into an "inner legislature," absorbing power from the premier and the cabinet, and limiting the rôle of the "back bencher," and the failure to develop an administrative organization and a civil service equal to the expanding functions of the state.

In a final chapter, Mr. Lipson raises some important questions and sounds a warning. How has socialism affected democracy? Can democracy and socialism coëxist? Are incentives lost in the search for security? How has equalitarianism affected intellectual life? Limiting his answers to New Zealand, he draws some interesting conclusions. Centralization and integration in the political structure were encouraged by the drive toward socialism. Checks have been swept aside, and today the power to govern is clearly vested in the cabinet and caucus of the majority party. They remain, however, "responsive and responsible." It is in discussing administrative institutions and the "spirit" of democracy that Mr. Lipson sounds his warning. In her passion to be democratic, New Zealand has perverted equalitarianism and carried it to extremes. Establishment of an administrative class similar to that in the British civil service has been opposed as insidious advocacy of a "privileged class;" all must be treated equally, regardless of worth; salaries and wages must be so scaled that the gap between highest and lowest is small; incentives in industry are lacking; opportunities are denied the talented; even in thinking and in social customs, there is a deadly uniformity. Are these tendencies an inevitable consequence of the fusion of socialism and democracy, or the result of New Zealand's smallness, isolation, and cultural homogeneity? It is a question which the author asks, but wisely does not attempt to answer. As he points out, the answer must wait until the interaction of democracy and socialism

has been studied in other environments. If Mr. Lipson's excellent book encourages such studies, our debt to him will be still greater.

LOUISE OVERACKER.

Wellesley College.

Political Power in the U.S.S.R., 1917–1947; The Theory and Structure of Government in the Soviet State. By JULIAN TOWSTER. With an Introduction by Quincy Wright. (New York: Oxford University Press. 1948. Pp. xi, 411. $6.00.)

This documented panorama of the changes in concept and structure of Soviet administration since 1917 adds up to make an authoritative analysis of the political mind of Bolshevism. Professor Towster, a native of Poland, and at present assistant professor of political science at the University of Chicago, devoted many years to the study and collation of the official documentary and interpretative official materials. The result is an impressive volume of reference, encyclopedic in scope, indispensable to teachers of the subject, and of pertinent interest to all students of world affairs. Of special help to the teacher are the detailed table of contents; the extensive footnotes on almost every page; the appendix of organizational charts; the bibliography of approximately four hundred titles in Russian, German, and English; and the comprehensive index which reflects the closely packed character of the text and footnotes.

In his preface, the author announces his guiding aim: ample detail and documentation; treatment of topics in an evolutionary fashion; and adequate emphasis on theory. The format consists of three parts, with an unequal number of chapters. Each chapter contains three sections.

Part I, "Principles of the Constitutional Order," presents the new emphasis on theory ("Concept of State and Law"; "Understanding of the Constitution"; "Class"; "Nationality"). Part II, "Structure and Operation of Government," is an exhaustive and definitive presentation of conceptions and interrelations of institutions in practice ("Party," "Soviet Pyramid," and "Judicial System"). This longest part, 191 pages, is probably of less immediate interest to the average reader than the other two parts, which bear more directly on foreign relations. Part III, "Dynamics of Political Power" ("Socio-Political Balance," "Nature of the Polity"), presents the author's judgments and conclusions.

Professor Towster keeps up a running comment in the main text, but allows the Russian authorities to reveal the details of the pattern as well as the ramifications of the general doctrine. The impression made on the reviewer is one of scholarship in its purest form. In the introduction, Quincy Wright draws attention to the "objectivity of his conclusions, drawn from this unparalled knowledge."

The main thesis evolving from this large-scale study is that while the Bolsheviks believe that periodic change is inevitable in the historical process (determinism), and that economic factors are the prime sources of change, they also believe that man can and must assume control of social and political change. With reference to the outside world, the author writes: "The generalization seems justified that more liberal practices might grow during periods of substantial external security and internal prosperity, while the dictatorial and centralist aspects would become accentuated in periods of actual or fancied threats from outside and material straits within." Here the author borders on the prevalent assumption that the Bolsheviks need war danger outside to dragoon Soviet citizens into the sacrifices necessary to build socialism in a country historically backward.

The author notes: "The political climate is less favorable for changes challenging fundamental institutions and principles. Here the element of ideological faith often displays a tenacity bordering on the fanatical. . . . More in the category of sacrosanct values, where conservation rather than mutation is likely in the foreseeable future, are the socialized state of the economy, collectivized agriculture, and the party's monopoly of power."

In his final conclusion, Professor Towster declares that reconciliation between political liberty and economic democracy, and between the Soviet and non-Soviet worlds, will depend, in large part, "on the readiness of the Soviet leaders explicitly or implicitly to revise some of their most important ideological conceptions." This dictum no true citizen of a political democracy could fail to applaud.

BRUCE C. HOPPER.

Harvard University.

The Law of the Soviet State. EDITED BY ANDREI Y. VYSHINSKY. Translated by Hugh A. Barb. Introduction by John N. Hazard. (New York: The Macmillan Company. 1948. Pp. 749. $15.00.)

This official Soviet textbook of the late 1930's, for which Andrei Y. Vyshinsky signs as a "general editor," is introduced by a brief criticism of early twentieth-century legal theories. This is followed by an exposition of the current constitutional theory of the Soviet state. The doctrine presented contrasts sharply with the writings of Soviet authors in the 1920's who sought to develop a legal theory in close conformity with classical Marxian concepts. Pashukanis, the latter's most outstanding exponent in Soviet legal theory, indeed held the view that the state was bound to "wither away" in the process of the establishment of the classless society. Legal institutions in the transitional stage appeared as remnants of bourgeois society, which "only continue to exist in order to exhaust

themselves definitely." To this school of thought, the dictatorship of the proletariat was a dynamic process of transformation, not to be institutionalized nor built into a doctrinal foundation for a new state machine.

In the book under review, that earlier doctrine, now denounced as that of "wreckers," is thoroughly refuted. The "withering away" is relegated to a remote place in the Utopia of a future "Communist" society. At the present stage, that of "socialist" society, a strong state is said to be required for a number of reasons: external dangers of capitalist encirclement; necessity to develop productive forces in a society rewarding the individual according to his officially evaluated efforts rather than to his needs; etc. The dicta of the Marxian classics are conveniently reshuffled—an easy effort in the case of a doctrine within which historical experience serves merely as a store of stage props which can be utilized at will without regard for the specific historical setting; and thus the new theory is born which ensures the state, and along with it the legal apparatus of coercion, of maximum changes of developments in Soviet society.

The new theory does not always excel in logical consistency and coherence. It would hardly be possible to justify the preservation and consolidation of a strong state with all its attributes of power and coercion (to be brought to bear upon the citizens of the state) by referring to "external danger" alone—provided that the official version is correct, i.e., that the exploiters have been liquidated; that friendship between proletariat and farmers is firmly established; that the scope of Soviet democracy constantly widens, etc. Despite the lack of consistency, it is the premises expounded above on which the textbook's authors base their detailed discussion of the organizational and institutional framework of the Soviet state, preceded by a short outline of constitutional and social history.

The techniques used for the 500-page elaboration of the constitutional establishment vary but little. To begin with, the corresponding institutions in Western countries are described in their actual working, with a mass of appropriate quotations from a rather accidental selection of Western authors.[1] Yet the unhappy conditions of the toilers in the West are not contrasted with the actual fate of their brethren under the constitutional practice of the USSR. Abruptly, the field of investigation narrows down. Social reality in the West, as the writers see it, is conveniently measured by the yardstick of Soviet documents—not Soviet facts—and it is proudly confronted with the text of successive Soviet constitutions, and especially

[1] The Soviet authors' acquaintance with American institutions is rather sketchy. There is abundance of customary, monotonous, and stereotyped judgments on capitalism and imperialism; but there also is misrepresentation of facts. No notice is taken of the fact that Roosevelt's court-packing plan never became law (p. 316); civil service goes unnoticed (p. 317), as does the existence of the pre-1949 Rules Committee of the House of Representatives (p. 351).

with the 1936 "Stalin constitution." Having thus become legal formalists, the writers can easily score; incontestable superiority of their paper institutions over those of the capitalist West is exhibited in this flimsy manner down to the smallest procedural detail.

The harmonious picture is only occasionally marred by intrusions from the province of social reality. The Communist party of the Soviet Union is allotted altogether two pages. In 65 pages on "The Elective System of the USSR," exactly four lines inform the reader that elections take place without opposing parties, which reduces their importance to vaguely integrating functions.

In his introduction, Professor Hazard assures the American reader that the book has been of influence on younger generations of Russian students. The reviewer has no reason to doubt this, and the question which inevitably arises in a Western reader's mind may thus assume secondary importance; still, it would seem appropriate to ask whether in addition to unsophisticated Soviet students, those who write such books also believe in what they so profusely state.

A few minor points: misspellings of non-Russian names abound in both the text and the footnotes, but the translator should be commended for having kept closely to the language of the original with all its inimitable vituperations, panegyrics, and little slips.

OTTO KIRCHHEIMER.

Washington, D.C.

Die Kommunistische Partei Deutschlands in der Weimarer Republik. By OSSIP K. FLECHTHEIM. (Offenbach, Germany: Bollwerk Verlag Karl Drott. Distributed in the U.S.A. by the Author, Waterville, Maine. 1948. Pp. xvi, 294. $4.00.)

Like all significant books written "from the outside" for distribution in postwar Germany, Professor Flechtheim's history of the German Communist party serves a twofold purpose: that of presenting an original work and that of helping the intelligent German reader to overcome the intellectual isolation in which he has lived for the last fifteen years. On both grounds the author has been eminently successful.

In order to accredit himself with an audience accustomed to sheer propaganda in all political writings, Professor Flechtheim had to demonstrate that there can be a scientific approach to the study of political institutions. By his discriminating use of original source materials and by his presentation of the very best results of recent social research, the author is enabling the German reader to look with objective detachment on political developments in his own country such as the failure of the Weimar Republic. The concluding chapter giving a critical reappraisal of the theory of the democratic state and discussing some of the Marxist critiques of democracy, such as Lenin's concept of the "workers' aristocracy," is particularly rewarding.

The main parts of the book retrace in considerable detail the history of political radicalism in Germany since before the First World War and that of the Communist party between 1919 and 1933. Differently from the authors of some other recent works on similar topics, Professor Flechtheim has no axe to grind. Hence his account is throughout concerned solely with the question of why the party fell so far short of its objectives and why there has been a steady decline in regard both to quality of leadership and to the ability to influence the masses of the German proletariat. The author also investigates carefully the reasons for which the C.P. contributed, at least objectively, to the success of the Nazi movement.

There, is of course, a very full discussion of the hand which the Russian Bolshevist party played in shaping structure and policy of its German counterpart. The increasing impact which factional disputes in the Soviet Union and the pressing needs of the "fatherland of the proletariat" have had on developments in the German party is studied in detail. Of particular interest is the demonstration of how at the start German radicalism was entirely adverse to Leninist thought and of how later many of the most crucial errors which the Communist International committed in Germany stemmed from a wrong evaluation of the actual rôle of the Bolshevist party during the events of October, 1917. The author, however, does not believe that the successive failures of the party are due solely to its lack of autonomous status. He shows how at its very inception the C.P. appealed only to certain groups of the working class, animated by a utopian chiliasm which was fundamentally alien to the bulk of the German proletariat. He also is able to explain why, quite independently of Russian "directives," an inability for grasping the potentialities of such situations as the Kapp *Putsch*, the Ruhr occupation, or the inflationary crisis deprived the party of any effectiveness.

From what has been said, it is obvious that Professor Flechtheim's book makes an important contribution not only to the history of the C.P. as such, but also to the general history of the Weimar Republic. An excellent bibliography (predominantly of works in the German language) and an appendix containing rare documents of party history, such as various programs and manifestoes, enhance the usefulness of the work.

Two minor criticisms may be added. (1) The effectiveness of presentation would have been increased if the author had not over-indulged in a sometimes tedious refutation of the opinions which various writers have previously expressed in regard to salient events. (2) Too much reliance seems at times to be placed on a book by a former, however well-informed, Communist (Georg Schwarz) who in 1933 sought to accredit himself with the Nazis by sensational revelations.

HENRY W. EHRMANN.

University of Colorado.

Separation of Church and State in the United States. By Alvin W. Johnson and Frank H. Yost. (Minneapolis: University of Minnesota Press. 1948. Pp. 279. $4.50.)

Johnson's *The Legal Status of Church-State Relationships in the United States* was published in 1934. The new book by Johnson and Yost is a revised and enlarged edition of the earlier volume, and is a much more useful work. The earlier book was limited to an examination of the legal phases of Bible-reading and other sectarian influences in the public schools, and to the legal status of Sunday legislation. The book by Johnson and Yost attempts a good deal more: in addition to the subject-matter of the earlier edition, the book discusses conscientious objection to the bearing of arms and the legal issues involved in the many cases brought by or against Jehovah's witnesses in the United States Supreme Court. The authors used primarily constitutions, statutes, and court decisions. The book does not purport to be a definitive study of the subject; it does succeed, however, in covering the principal issues, as we see them today, in the relations between church and state.

A failing of the book is that it does not analyze some constitutional issues with sufficient thoroughness. The authors dispose of the United States Supreme Court decision in the McCollum case in one page; the Everson case does better, getting four pages; the Barnette decision is considered in two pages. On the other hand, however, it should be said to the credit of the book that it accounts for every important federal or state case. It should be of great service as a summary of the legal issues and as a guide to the statutes and reported decisions.

The book is useful also as a record of the many concerted attempts by churchmen to win government support of religious teaching and dogma. If the churchmen had their way, there would be no separation of church and state, and the church would have created a problem for Americans that could be compared in complexity only to the problem thrust upon us by the racial segregation laws; and it would be as difficult to undo the mischief of the churchmen as it is to undo the mischief of the believers in white supremacy.

The authors take their stand for "a complete separation of church and state." They rightly believe that a breakdown of separation would be as harmful to the churches as to the body politic, for "it is certain," they say, "that any religion, organized or not, that solicits state aid or intrudes its hand into state affairs is weakened or at least is inviting the decline of its spiritual powers." They also answer the argument of those who maintain that while the public schools should be free of denominationalism, "religion" should be taught to all pupils; for the examination of the court decisions has demonstrated to the authors, as it would to anyone else who

looks for the objective facts, "that religious instruction in the public schools cannot be separated from denominational differences."

The authors are to be commended also for venturing to speak out against the Sunday laws. Such laws, they say, should be relegated to the limbo of bygone days; and they point out that when citizens are afforded an opportunity to vote on the question, they generally repudiate the judgment of courts and legislatures, and repeal such laws. Sunday laws have been repealed in Wisconsin, California, Oregon, Arizona, and Wyoming. The authors report that there are strong sentiments and organized movements for repeal of such laws in other states. A pattern that may be followed has been set by California and New Hampshire, where the law requires rest on any one day of the week, "one day of rest in seven."

The concerted drive being carried on today to breach the wall of separation between church and state gives to the book by Johnson and Yost a relevance and an urgency that should make it a welcome addition to one's library.

MILTON R. KONVITZ.

Cornell University.

The Social Politics of FEPC; A Study in Reform Pressure Movements. BY LOUIS COLERIDGE KESSELMAN. (Chapel Hill: University of North Carolina Press. 1948. Pp. xvii, 253. $3.50.)

The literature of political science contains far too few competent case studies in the area of group politics. Professor Kesselman's interesting examination of the National Council for a Permanent F.E.P.C. will, therefore, be welcomed as a useful addition to the field, despite possible criticisms of its shortcomings. The author has drawn his raw materials largely from the files of the National Council, supplemented by interviews, correspondence, and a careful review of the Negro press. He concentrates his attention "largely upon the forces which sought to persuade Congress . . . , rather than upon parliamentary maneuvers," an arrangement not entirely fortunate in its consequences, since it prevents him from arriving at a very firm evaluation of the National Council's strengths and weaknesses.

The book is divided into three parts, the first of which contains four chapters dealing with the problem of employment discrimination, early attempts to meet it, the origins and purposes of the National Council, and its organization and financing. These contain a good deal more than "bare bones," though the reader is tantalized by such almost incidental references as that to conflicts between the National Council and the President's Committee. Considerable space is given to a discussion of the Council's leadership, and properly so, though one wishes for a more

explicit discussion of the factors within the group of which persistently inadequate leadership was a symptom.

Part two, entitled "The Factor of Social Cohesion," is the longest of the three and is concerned primarily with the problems of coördinating various groups potentially or actually interested in F.E.P.C. legislation, such coördination being a major purpose of the Council. Two chapters deal, respectively, with the problem of Communist coöperation (with the largely unsupported conclusions of which many may wish to quarrel) and the sources of political opposition. The broad conception underlying this section is a profoundly important one, but the chapters do not live up to the promise of the title under which they are presented, though they include a good many suggestive insights. They represent rather more a catalogue of organizations and activities bearing upon the National Council and the F.E.P.C. than an analysis of the cohesion of a political movement.

The third section contains one chapter dealing in straightforward fashion with the National Council's use of the various communications media; one on the relations between the National Council and political parties and leaders, which contains a wealth of suggestive material; and a summary chapter, which is skillful but somewhat overloaded with normative references.

This book should rank high among those of its type. Its limitations are largely those of the field as a whole. Without a consistent conceptual scheme of group politics, one has no hypotheses to test and is confined to illustrating certain unsubstantiated legends dealing with the subject. Professor Kesselman's study would have gained considerable strength from the use of hypotheses and propositions such as those developed by Robin Williams in the area of minority group conflicts. As it stands, the book is a useful addition to our knowledge in a documentary sense, but it does little to advance our knowledge at a higher level of generalization.

DAVID B. TRUMAN.

Williams College.

Alabama's Heritage. By JOSEPH M. RAY AND LILLIAN WORLEY. (University, Alabama: Bureau of Public Administration. 1947. Pp. v, 186).

Mississippi's Wealth. By ROBERT BAKER HIGHSAW. (University, Miss.: Bureau of Public Administration. 1947. Pp. v, 190.)

Rescued Earth. By LEE S. GREENE, VIRGINIA HOLMES BROWN, AND EVAN A. IVERSON. Knoxville: University of Tennessee Press. 1948. Pp. x, 204.)

Resource Management in North Carolina. By PAUL W. WAGER AND DONALD B. HAYMAN. (Chapel Hill: Institute for Research in Social Science. 1947. Pp. x, 192.)

Safeguarding Kentucky's Natural Resources. By Vera Briscoe, James W. Martin, and J. E. Reeves. (Lexington: University of Kentucky. 1948. Pp. x, 224.)

South Carolina's Natural Resources. By Christian L. Larsen. (Columbia: University of South Carolina Press. 1947. Pp. xi, 211.)

The subtitle of each of these six volumes is "A Study of the Public Administration of Natural Resources." Commonly planned and developed, they are much more significant together than they would be separately. Each is a competent and worthwhile contribution to a single state. Together, they have both regional and national values. Still another volume, regional in character, is to come, with Tennessee Valley Authority sponsorship. It may be counted upon to develop these larger values.

There is a fairly uniform scheme of organization. This provides in each volume, first of all, a historical account of state response to growing popular realizations of need for social husbandry of basic physical resources, given successively in terms of the various resources. The historical treatment then moves into more detailed description of existing administrative realities. Here in each case "administrative management" is properly treated more broadly than the meaning often given that term, carrying it pretty well to the heart of program significance. There is in each case an important chapter on "Relationships," which ties administrative considerations tightly to the social order the physical resources of which are being administered. Earthy in subject-matter, the intellectual approach is rather elevated. Finally, there are conclusions and recommendations which make of each book a public, political document for its own state, with a series of proposals to responsible officials from students of public administration.

These books will interest chiefly such political scientists as are especially concerned about the administration of natural resources—who should be a growing company. Measured in terms of the number of public personnel involved (and consequently with regard to career possibilities for students); measured in terms of public expenditures; or measured in terms of social impact—natural resource management is now and increasingly a major aspect of government. Related literature is available in the fields of farm technology and soil conservation, in government reports, and in publications reflecting a preoccupation with planning not very closely involved with action. Up to now, however, there has been very little from political scientists to put on shelves and desks alongside these volumes.

In other words, here are six books dealing with program administration. As such, they are a contribution to the literature of public administration to be sharply distinguished from books dealing with engineering and staff or economic, legal, and other special or incidental aspects of public ad-

ministration. All six are written in keen realization of something simply stated in the Mississippi volume: "The purpose for which administration is devised is the attainment of objectives laid down in programs."

In terms of their own objectives, the books are individually and collectively successful. The authors are not extravagantly enamored of planning in its highly professionalized aspects; they do not suffer from the conservation panic which underrates the promises of technology and science; they are not fanatics; with balanced views, they treat the administration of some highly important programs.

Dealing with single states, these books are remarkably free from parochialism. Perhaps a trace of it is recognizable in the Mississippi volume. The treatment of inter-organizational relationships is generally excellent, but the government-citizen picture appears dimly between the lines rather than similarly developed. The application of administrative theory is good. The emphasis on "complete integration" of resource administration is at least temporarily valid because of the dimensions of the public concerns and governmental areas treated, although a similar preoccupation with some other functions might lead easily to serious structural error and political imbalance. Complete integration of military interests, for example, would end the reality of civilian control. Even in these books there is too sweeping endorsement of central purchasing, no doubt as a rather extreme reaction to extremely bad existing practices. It should be remarked also that the South Carolina volume accepts too readily the administrative commission; if this is state strategy, it is a blemish on the volumes as a regional and national product.

The major significance of these volumes, however, is greater than their reader-interest or their specific content. This significance is to political science at large. It is found in the fact that these books are an experiment in inter-institutional research. This appears attributable to the special leadership and stimulation given by Professor Roscoe C. Martin, of the University of Alabama. Under his leadership, these books are a systematic and integrated product of six universities, the Tennessee Valley Authority, twelve authors, a number of assistants, and many consultants. Not merely in number of persons serving as sources of material, but in numbers of institutions and persons actually engaged in planning, carrying on, and interpreting research, this project must establish some kind of record in the field of political science.

In a world increasingly characterized by huge and growing, complex and interrelated institutions, the discipline dealing with the largest, most complicated and pervasive of these institutions must ask itself whether it is not dealing too exclusively with details, whether it is not itself dependent upon institutional efforts if it is to search out the profoundest institutional significances. The administration of research in political science,

and in social science generally, may be much more important than, moving within the limits of existing institutions, resources, and traditions, we have been ready to admit. The project which produced these books has thrown out a challenge to our own insistence on rugged individualism.

PAUL H. APPLEBY.

Syracuse University.

The Agrarian Revolt in Western Canada. BY PAUL SHARP. (Minneapolis: University of Minnesota Press. 1948. Pp. x, 204. $3.00.)

This monograph represents another item in the history of the North American frontier, covering specifically the period from the emergence of the "last best West" in the late eighties until the middle twenties. The area comprises the three prairie provinces of Western Canada. The field of inquiry is that of the political revolt, which so closely followed the patterns set in the United States during the era of Populism. The author utilizes the traditional method of historical scholarship, citing the innumerable newspaper and magazine sources on the subject. In general, the result is quite satisfactory, though there are some patent shortcomings.

The prairie provinces are not well integrated into the whole fabric of Canadian politics. For the most part, Ontario politics is assumed to be synonymous with Canadian national politics. Little is said of the separatist leanings of Quebec or of the step-child feelings in the maritime provinces. Not enough attention is given to "the pirates of St. James Street," the Canadian counterpart of Wall Street, to render effective the meticulous description of the prairie-farmer political movements. Nor is there much evidence of a close understanding of the intricate economic principles of agricultural coöperation. On the other hand, the personal clashes among prairie politicians are more than adequately treated, and the volume is valuable especially for this contribution despite its lack of adequate treatment of the ideological issues involved in the revolt.

The author is an excellent student of the history of lost agricultural causes in the United States. The Canadian *dénouement* is related against the background of grangerism, populism, and the Non-Partisan League. As politicians of our own prairies crossed the 49th parallel for their last attempt to achieve justice for exploited farmers, the Canadian story is largely that of the reënactment of mistakes which caused the demise of our own agricultural radicalism. In both countries, the failure of agricultural political revolt stemmed essentially from symptomatic treatment of deep economic maladjustment. The leaders, like W. J. Bryan, were almost clairvoyant in expressing the inarticulate yearnings of the average husbandman, but they were largely unaware of the scientific engineering

revolution which was already well on the way toward a revamping of the non-agricultural portion of the economy.

Mr. Sharp's best chapters describe the Non-Partisan League. Born only a year (1916) after its advent in North Dakota politics, the League retained its institutional integrity only four years. It was strongest in Alberta, where it contributed immeasurably to the conviction that farmers would have to adopt radical political measures for their economic and social protection. In fact, the strong influence of the Woods and the Leedys led directly to social credit in Alberta, though the author does not explain why Alberta should have remained loyal to the spirit of revolt, while Manitoba and Saskatchewan returned generally to the formal pattern of Canadian politics.

CORTEZ A. M. EWING.

University of Oklahoma.

European Ideologies; A Survey of 20th Century Political Ideas. EDITED BY FELIKS GROSS. (New York: Philosophical Library. 1948. Pp. xv, 1075. $12.00.)

It is no mean task for an editor to attempt to coördinate the efforts of twenty-four writers contributing twenty-seven essays so that a balanced picture of contemporary European political thinking will result. In spite of the excellence of some of the individual contributions, this volume falls short of that goal. Contrary to the subtitle, it deals mostly with nineteenth rather than with twentieth-century thought, and emphasizes Eastern at the expense of Western Europe. Too much space is devoted to ideologies which are of secondary importance today, such as Anarchism, Zionism, Panslavism (over 100 pages). The chapter on trade unionism does not mention the Christian trade unions, nor the Communists' attempt to control unions formerly dominated by the Socialists. The book has sections on five countries, England, Germany, Italy, Sweden, and Belgium, but none on France. The chapter on separatism attempts to cover all separatist movements, but omits the Flemish issue.

Of the major ideologies, two are covered inadequately. Thus, Algernon Lee equates Social Democracy, and only this movement, with orthodox Marxism. To that end, he interprets Marx as a gradualist and a patriot. On the other hand, he characterizes Lenin's theory as merely "camouflaged with early Marxian phraseology" (p. 102), and makes him exalt the state, but neglects to mention his doctrine of its withering away. He concedes that Engel's prediction to that effect was wrong, "but the error . . . is not very important" (p. 181). The author omits the history of the European Socialist parties after 1917; hence he does not explain how they have evolved toward their present rôle of center parties, opposing totalitarianism of the left and right.

According to Rubin Gotesky, liberalism favors planned economy and government ownership of the major industries. The author seems unaware that the term "liberalism" is used in Europe in its traditional sense, and designates a movement which defends free enterprise and private ownership of all the means of production against socialism, with which it has only anticlericalism in common. The present ideologies of the liberal parties in general, and of the French Radical-Socialists in particular, are covered neither in this chapter nor elsewhere in the book.

Two of the other major ideologies, on the other hand, are dealt with in highly commendable fashion. In his chapter on Communism, Max Nomad describes clearly how Marx's vision of the dictatorship of the proletariat giving way to a classless society has become an ideological cloak to mask Stalin's dictatorship over the Russian people perpetuating a new class society. He shows how the Communists' platform fits in at any given moment with Soviet foreign policy. But Nomad does not discuss how the Communists have, after World War II, attempted to gain power "legally" in Western Europe by conquering the people's minds. Thus, he could have explained the spell of the party not merely on "college graduate American liberals" (p. 70), but—far more important—on so many common people in Europe this side of the iron curtain. This is otherwise a succinct account of what a student should know on the subject. The same can be said of the objective study of "Catholicism and Politics" by Alfredo Mendizabal. He declares that "Christian faith may not be fettered to any political form" (p. 491), and that Catholics are divided between a progressive and a "narrowly conservative tendency" (p. 524). The author does not minimize, but condemns, the Church's reluctance to reconcile itself to liberalism and democracy, and its readiness to support fascism, especially in Spain. These two, and some other essays, *e.g.*, those on Falangism by Stephen Naft and on Pan-Germanism by Friedrich Foerster —provide the high standard to which the volume as a whole fails to live up.

FELIX OPPENHEIM.

University of Delaware.

Ordeal by Planning. By JOHN JEWKES. (New York: The Macmillan Company. 1948. Pp. xi, 248. $3.75.)

The literature on the subject of central economic planning grows as voluminously as those governmental regulations which the anti-planners attack. This recent contribution comes, with historical appropriateness, from the Stanley Jevons professor of political economy at Manchester University. Its theme may be summed up in three words: Hayek was right. The arguments fall into two parts. There is a restatement of the case for a free price mechanism and a defense of that system against its

critics, which leads to a review of the theoretical ideal of state planning and a devastating attack upon Labor party policy in postwar Britain. It is on the last topic that the book has material to offer which informed readers will find new, and which contains some merited strictures.

The restatement of the nineteenth-century doctrine is based upon the traditional points that the self-regulating character of pricing in the open market preserves the freedom of the individual and stimulates incentive. That practice has frequently differed from precept, Professor Jewkes of necessity concedes. He offers no defense of monopoly capitalism (p. 57) and admits that "in the past private enterprise has been the cause of heavy and prolonged unemployment" (p. 59). He therefore allows that the state should take positive measures both to prevent monopolies and to maintain the general level of expenditure. How the latter function would be performed without a considerable measure of state planning he nowhere considers in detail. Nor is he any more successful in defending the free economy against the contention that it permits the unequal distribution of wealth. "The most effective way," says the author, "of evoking economic effort from any group is to create a system in which the average return is low, but in which a few large prizes exist for exceptional achievement, prizes after which all may strain but which few can achieve" (p. 52). This would be all very well if everybody started equal, which of course is not the case. The handicapping of the poor violates basic principles of social justice.

In Professor Jewkes' treatment of the planning he criticizes, two defects emerge in sharp focus. He discusses with ill-suppressed animosity the controversial issues of postwar policy in Britain, and his objectivity is seriously marred by personal irritability. He speaks of "lessons to be drawn . . . coolly and without bias" (p. 17). Yet he refers to his opponents as "scribblers of the Left" and as having "a high mental volatility and a low intellectual flash-point" (pp. 28–29), which certainly shows coolness toward them, but is not without bias. Equally does the scholarly value of the work suffer from an almost complete failure to relate contemporary planning in Britain to the aftermath of six grim years of war. Much of the discussion in consequence either misses the point or betrays a lamentable blindness of view. Thus, when the author states that "unemployment of five or six per cent should not be a matter for concern" (p. 79), it is pertinent to observe that it concerns very vitally those who are included within that number, and their families. Furthermore, what is to be said of the statement that "no planned economy has yet operated without suppressing free speech, destroying representative government, robbing the consumer of free choice, and virtually abolishing private property" (p. 189)? The experiences of Sweden, Norway, and New Zealand, quite

apart from Britain herself, are an adequate answer to such silly exaggerations.

LESLIE LIPSON.

Swarthmore College.

Power and Personality. By HAROLD DWIGHT LASSWELL. (New York: W. W. Norton and Company. 1948. Pp. 262. $3.00.)

Political scientists have no little difficulty in deciding what they are: historians, lawyers, philosophers, efficiency experts, evangels of one world, photographers of institutional apparatus. For the synthesis and orientation of the efforts of these diverse persons, some guiding principle or unifying system of thought is necessary. In the development of such a scheme of ideas, no latter-day political scientist has labored more diligently than Harold Lasswell. His organizing concept has been power; his method has been empirical. The focus of attention must be the behavior of political man. Observation must be rigorously separated from the justification of policy preferences. In this approach he sets himself apart from those of our guild who take their stand as experts on right and wrong, a position that they often justify by curiously elliptical empirical procedures.

In the present work—first presented as the Salmon Lectures of the New York Academy of Medicine—Lasswell pulls together various aspects of his earlier thought and carries the argument several steps farther. The ideas of his *Psychopathology and Politics* and of his *Politics* are merged into a statement pointed toward a program for the strengthening of democratic institutions. Although it is not explicitly so, the argument is a rebuttal of earlier criticisms of his general position. For those who could only conjure up pictures of Hitlers and Stalins from the notion of power, he spells out the concept in detail. He restates the rôle of personality formation in the development of political leaders, perhaps more lucidly than in his earlier formulations.

Only by indirection does he strike at his major critics, i.e., those who contend that to save the world we should preach democracy and that empirical study can lead only to chaos. He holds the view that democratic institutions can be strengthened by conscious and deliberate action; that the basis for effective action must be knowledge of the nature of democratic processes, of the kinds of personality that contribute to their maintenance; and that the way to obtain this knowledge is by observation of human behavior. In observation, he would use all the tools of medicine, psychology, biology, psychiatry, and whatever else might be at hand. If this states Lasswell's case correctly, it seems, to a non-philosopher, unexceptionable, although the contrary position that we should take refuge in faith and infallibility is argued with great vehemence. A disturbing

aspect of Lasswell's approach—and it may disturb others—is that if he is correct, our profession is afflicted with a high degree of technological obsolescence.

V. O. KEY, JR.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

A quick source of information on President Truman's pre-election promises will be found in *The Truman Program* (Public Affairs Press, 1949, pp. x, 261, $2.95), edited by M. B. Schnapper, and with an introduction by Senator Francis J. Myers. This is a collection not only of the President's big messages and campaign addresses, but of many of the smaller "whistle-stop" speeches and veto messages as well. Moreover, all are carefully classified under such admirably logical headings as international affairs, prices and inflation, big business, taxes, agriculture, labor, civil rights, social security, health and medical care, housing, education, etc. The 1948 platform is included in the appendix. Notwithstanding some inconsistencies, these are not empty and meaningless phrases. The President was fighting hard, and it is obvious that his attacks on the so-called "do-nothing" Eightieth Congress and his assurances of a continuation and extension of the New Deal program were effective elements in his campaign strategy. Moreover, a vote of thanks should be extended to the Wallaceites. Not only did they pull the President farther to the left than he would have gone otherwise; they made his pledges seem more respectable by freeing him from the charge of Communist control. As this is written, it is too early to predict the extent to which the President will be able to fulfill his pledges. The surprise nature of his victory places him in a strong position. But party responsibility in Congress is only a vague thing at best, and conservatives of both parties will undoubtedly be able to block the President at many points. Compromises are inevitable, particularly on labor and civil rights legislation.—E. ALLEN HELMS.

Professor Roy Victor Peel, in his *State Government Today* (University of New Mexico Press, 1948, pp. viii, 176, $3.00), "aspires to nothing more than raising some questions about our American system of state governments." Some of the important questions presented are those concerning whether or not these governments are performing the functions entrusted to them in an adequate manner, whether the states are hamstrung by tradition and legalistic and political chains, and what, in general, should be done about our state-national system. The first chapters review in an interesting manner the purpose and functions of the states and their rôle in the federal system and describe these units as they are today, with special emphasis on population differentials, natural resources, and the

theory of regions. The author's comparison of states touches upon statistics which not only are timely but reveal the social, political, and economic life of the United States. Discussion of the more important functions and problems of state government, such as education, welfare, crime, housing, and finance, while rather brief, is definitely to the point and supported, in turn, by current statements of fact and meaningful statistics. The last part of the book is concerned with the problem of what should be done to correct the ills of American federalism. Professor Peel proceeds on the basis of three assumptions, which in turn could be interpreted as possible solutions. First, we can leave the federal-state system substantially as it is. Secondly, we can make significant changes in it by, for example, improving administrative procedure or introducing budgeting and accounting practices. Thirdly, we can scrap the states and make a new beginning by establishing regions with responsible government in each. The author, however, closes his work in a pessimistic vein by observing that "the outlook for really intelligent effective action in the whole domain of government is not promising." Written in a very stirring and popular style, this book is well documented and contains an appendix that not only lists institutional sources of information but also presents a very inclusive bibliography of general and specialized books and articles in the field of state government. For a change, here is a book that not only will be acceptable to teachers of state government as a supplementary text, but also has been written for the layman and the public official.—KENNETH F. MILLSAP.

Government and the American Economy (W. W. Norton and Co., 1948 pp. xvii, 935), by Merle Fainsod and Lincoln Gordon, is a revision of the 1941 edition, although the preface acknowledges that the new volume is composed of the original edition supplemented by two new chapters covering the period since the earlier edition. It seems unfortunate that this monumental examination of the relationship of our government to our economy should be divided into two separate periods. This weakness, however, does not detract from the fundamental value of this exhaustive one-volume treatment of our government's rôle in the economy. The book is divided into four major parts, the first dealing with the American setting, which concerns background, economic interests, and the legal and constitutional framework; the second section is entitled "Government as Promoter of Particular Interests," and concerns business, agriculture, labor, and consumer groups; Part 3 relates to government as regulator in the public interest and examines the growth of government regulation and regulation of transportation, electrical utilities, communications, investments, trusts and monopolies, trade practices, and special experiments in industrial control; Part 4 reviews the subject of public enterprise and

conservation, dealing with the scope of public enterprise, public corporations, conservation of natural and human resources, the economy in total war, and public policy in the American economy. Students of this subject will not find much new material in the volume, but they will discover some fresh slants on certain angles of government economic activity. The summary and concluding treatment of the different aspects of the problem as organized by Professors Fainsod and Gordon are particularly valuable for welding together the complex pattern of the development of American governmental regulation and ownership.—CONLEY H. DILLON.

William L. Riordon's *Plunkitt of Tammany Hall*, first published in 1905, has been re-issued with an introduction by Professor Roy V. Peel (Alfred A. Knopf, 1948, pp. lvi, 131, $2.50). This "series of very plain talks on very practical politics" has become one of the classics of American politics, hitherto difficult to obtain. What is practical in politics, however, is fickle as fashion. As a result, much of Plunkitt is clearly dated. The bitterness of the attack upon civil service reform and the direct primary is illustrative of an earlier concern now dissipated by machine techniques which largely circumvent these reforms. The reason that this little volume has become a classic is to be found in the political precepts which are of a more ageless character. When Senator Plunkitt dismisses reformers as "Mornin' Glories" because politics is a "regular business" in which "You've got to be trained up to it or you're bound to fall," or when he emphasizes the necessity of the political leader being close to his constituents in the chapters "Tammany Leaders Not Bookworms" (p. 60 ff) and the "Dangers of the Dress-Suit in Politics" (p. 66 ff), he is phrasing in homely jargon some of the most fundamental rules of politics. It would be equally easy to overestimate the value of this book and to overlook its importance. Fortunately, the long introduction by Professor Peel (39 pages) helps to avoid both pitfalls. In what amounts to both a prologue and an analysis, Professor Peel has placed George Washington Plunkitt in focus in terms of time, place, and contribution.—DAYTON E. HECKMAN.

The pathology of political organizations is supposed to be a subject of great interest to the general citizen and to the special student of political phenomena. Such ought to be the conclusion derived from a consideration of Maurice M. Milligan's *The Inside Story of the Pendergast Machine by the Man Who Smashed It* (Scribner, 1948, pp. 280). Somehow the volume misses fire. This is not to imply that it is not interesting, nor yet unsupplied with factual material relevant to its subject. Those qualities it does possess. However, it lacks the punch usually associated with accounts of machine-busting district attorneys or the high-riding reformers in shining armor of righteous indignation. As an account of the genesis and partial exodus of the Pendergast machine in Kansas City, it is de-

cently adequate—just that. Much more would and should be desired if this is to become of sufficient significance to merit more than casual attention from the serious student. The book fails to be biography either of Pendergast or of the author; it fails to be an account of political maneuvering either pro-Pendergast or contra-Pendergast; and it adopts a restraint which is forced when it deals with the Truman-Pendergast relationship. Its best sections consist of the account of the coöperation of the FBI and District Attorney Milligan in solving the so-called Union Station massacre.—CHARLES W. SHULL.

Within recent years, the expansion of the federal government has been surpassed only by the growth in volume of public documents and other materials relating to the government. The librarian's problem is that of finding space to house the unceasing documentary flow; the student's problem is that of finding his way through this mass of publications. Dorothy C. Tompkins' *Materials for the Study of Federal Government* (Public Administration Service, 1948, pp. ix, 338, $5.00) provides a guide that teachers as well as students will welcome. The volume constitutes an annotated bibliography of documents and other publications of the various branches and departments of the federal government, listed under the following headings: the federal government in general, the Constitution and law codes, publications of Congress, the President, the courts, executive organization and reorganization, the budget, government statistics, the New Deal, and World War II. Each section has a short introduction, and additional explanatory notes accompany the bibliographical selections. While Miss Tompkins has confined her attention primarily to documents published by federal agencies, she has included representative materials (including articles from this REVIEW) about the federal government also. It is to be regretted that the book was not printed in a standard type rather than by photo-offset of typewritten pages; in its present form it is not too easy to read. But a convenient index provides partial compensation.—NELSON E. TAYLOR, JR.

In *A Jerseyman's Journal* (Princeton University Press, 1948, pp. 342, $5.00), Walter E. Edge presents an autobiography so highly personalized that it could easily be subtitled "Walter and I." A student of practical politics learns of the methods employed by a contemporary New Jersey politician for succeeding remarkably in gaining his objectives in public affairs. But reasons for half a century of success must be gleaned largely from a wider grasp of recent and current politics in the province, too much of which politics is omitted from the narrative. Academicians will be surprised to hear the compliments to New Jersey's most successful boss, whom Edge has long opposed, sometimes defeated, and probably always admired on several counts. Likewise the presence of at least three bosses

in Jersey may prove shocking to the chronically complacent contemporaries. But Edge remains forthright. No one seems farther removed from the author's intended audience than the political scientist, and consequently the autobiography contains very little of value for his professional use.—JOHN J. GEORGE.

Of interest to students of comparative state government is *The Constitution of Kentucky; Suggestions for Revision* (Bureau of Government Research, University of Kentucky, 1948, pp. 118, $0.35), edited by Amry Vandenbosch. This symposium by long-time students of Kentucky affairs in operation presents the salient features of governmental practice under the constitution of 1891 in contrast with modern practices. Although amendments have permitted some modernization, and although "practical" administrative adaptations have circumvented certain constitutional strictures, it is made apparent that the commonwealth still suffers from the political inhibitions of the past century. Outstanding among the critical essays are those dealing with making administration responsible and efficient, the electoral process, finance, and education. For its temperately critical appraisal of the old and its persuasive advocacy of modernization, this study will be a valuable addition to the current literature of state government.—DAVID W. KNEPPER.

FOREIGN GOVERNMENT AND POLITICS

William A. Robson's *The Development of Local Government* (George Allen and Unwin, Ltd., 1948, pp. 376, 18s.) has now appeared in a revised and enlarged second edition with a new prologue on the crisis in local government. Three-fourths of the book is still much as it was in 1931; it is mainly in the prologue that Robson's more recent thinking is to be found. This makes it easy to observe the evolution that has occurred in his attitude towards regionalism, as a result of his *Government and Misgovernment of London*. Formerly he advocated the creation of indirectly elected special-purpose regional boards; now he prefers directly elected general-purpose councils, in which the government would vest full responsibility for planning and administering many now nationalized services such as highways, airfields, passenger-transit, public utilities, new towns, and hospitals, as well as water control and waste disposal. What would be left for counties and county boroughs to administer is not made clear in this volume, but would presumably include the exercise of police power and the provision of cultural services. Two tiers of directly elected authorities with administrative responsibility are thus advocated with as much finality today as was bestowed on one tier seventeen years earlier. No third-tier concession is made to recent "neighborhood" thinking, although the original work begrudgingly preserved the rural parish for pur-

poses of "representation" though not of administration. Nor is much consideration given to the tendency of British voters not to vote in elections for higher levels of local government when there are several tiers. Besides raising fundamental questions of local-government structure, Robson has again included useful discussions of *ultra vires*, personnel, and auditing. Several closely-linked themes run through all this book, giving it a certain moral unity—the need for enterprise and imagination in place of pedestrian routine; the utility of re-thinking local government in terms of general welfare instead of seeking a balance among its competing vested interests; and the desirability of keeping socialism democratic. Like all the works that have earned Professor Robson the chair of public administration in the University of London, this present work is no mere descriptive survey, but is a searching piece of analysis, as provocative as it is well-documented.—W. HARDY WICKWAR.

B. Wilkinson, *The Constitutional History of England, 1216–1399; With Select Documents:* Vol. I: *Politics and the Constitution, 1216–1307* (Longmans, Green and Co., 1948, pp. xviii, 240), is the first of a series of volumes planned to revise and supplement the famous *Select Charters* of Bishop Stubbs. Where Stubbs presented sources to illustrate simply the straightforward constitutional development, Professor Wilkinson has decided to give selections that indicate in addition the political conflicts and the economic and social conditions that influenced constitutional change, and to give a lengthier discussion than did Stubbs of the problems involved. In this volume there is an adequate introduction outlining the problems and policies of the kings from the death of John to the end of the reign of Edward I. The sources that follow, and the critical comments, chiefly illustrate the difficulties that faced Henry III in 1223 when his minority ended, the first crisis of the opposition of the magnates in 1233–34, the "Paper Constitution" of 1244, the Provisions of Oxford, 1258, and the crisis that Edward I met in 1297, when the magnates and knights of the shire challenged the king's right to demand their services in a war overseas and obtain taxes for the purpose. The problems are well chosen and illustrated. And the critical discussion, especially that of the crisis of 1297, is clear and scholarly, reflecting the sound work of recent scholars in the field. I note with pleasure the evident influence of Sir Maurice Powicke's great work on Henry III when Wilkinson is discussing the constitutional difficulties of that sovereign's reign. On the whole, this first volume is a happy forecast of the volumes to come. But I confess that I should prefer the sources in the original languages rather than in translation.—GAINES POST.

The basic aim of the Teach Yourself History Library, edited in England by A. L. Rowse of All Souls College, Oxford, is simple enough. It is to

employ the biography of a great man in order to "open up" an important period or aspect of history. J. Hampden Jackson's *Clemenceau and the Third Republic* (Macmillan Co., 1948, pp. xiv, 266, $2.00) faithfully carries out the intention of the series. Clemenceau is certainly a most natural choice. Of the seventy years of the Third Republic, his long and active life—he died at eighty-eight—spanned the whole period except for the last ten years. The *crise* was so characteristic of the Third Republic that its whole life seems almost a continuous crisis or series of crises. The little book under consideration naturally highlights the important ones, separate chapters being devoted to the Commune, to Boulanger and Panama, to Dreyfus, and to the First World War. Clemenceau, of course, took a leading part in all of them. Except for the last, his part, it is true, was largely a negative one, his real *forte* in politics, in spite of one relatively long ministry, being opposition. He inherited being a Radical, and he remained a Radical to the end; but he was never really a leader of the "little people" of France, the backbone of the nation. In this and other respects, one misses much as well as gets much of France in following Clemenceau's career; but one must not forget that in Professor Jackson's account one is being introduced. The work can hardly lay claim to careful scholarship. For example, there are numerous mistakes of detail that could easily have been avoided. The chief virtue of the volume is its lively style. For this reason, it is, in no derogatory sense, light and enjoyable reading.—R. K. Gooch.

Though not a lengthy study, Harold O. Lewis's *New Constitutions in Occupied Germany* (Foundation for Foreign Affairs, Pamphlet No. 6, 1948, pp. vi, 145, $1.00) offers a substantial amount of material in convenient form relating to postwar Germany. The first seventy-five pages are devoted to brief but illuminating chapters dealing with the constitutions in the American and Soviet Zones, the relations of constitutions and the reserved powers of military government, the problem of a central German government, and bizonal administrative organization. Here the author not only essays to summarize the most significant provisions of the various *Land* constitutions, but adds some interesting comments as to their implementation. In general, he is not optimistic as to results, concluding that not only the Soviet Union but the United States and Great Britain have been more concerned with imposing their own political and economic forms on the German people than with working toward a promising German system. In one of the appendices, a very useful comparison in parallel columns of the provisions of the American Zone Württemberg-Baden constitution, Soviet Zone Saxony-Anhalt constitution, and French Zone Rhineland-Palatinate constitution is provided. Other appendices reproduce the texts of official documents issued by the four Allies dealing

with military government, including Proclamations 7 and 8 of American Military Government relating to Bizonia and the directives for the constitution of a German democratic republic.—HAROLD ZINK.

European economic conditions are considered in two recent volumes. One of these, *The European Recovery Program* (Harvard University Press, 1948, pp. 309, $4.50), by Seymour E. Harris, concentrates attention on the Western European countries. The other, *The Economic Problem of the Danubian States* (Victor Gollancz, Ltd., 1947, pp. 223, $4.50), by Frederick Hertz, concerns itself primarily with the three states of Austria, Czechoslovakia, and Hungary. The volume by Harris describes and evaluates the European Recovery Program and gives consideration to its impact upon the United States. The presentation is divided into four parts: (1) major economic and political issues; (2) Europe and her balance of payments; (3) impact on the United States; and (4) economic recovery. Substantial portions of several chapters are statistical and provide dull reading—even the author suggests that the non-technical reader skip over these sections. Harris emphasizes that the ERP is a program for political action as well as an economic program. Its political aspects are considered in relation to the opposition to the spread of Communism, the repercussions on non-participating nations, and the preservation of the private enterprise system against the encroachment of socialism.Many political factors entered into the formulation of the program, and many such factors will influence the outcome. The primary concern of the volume, however, is with the economic aspects of the ERP. Hertz's book, which is a study in economic nationalism, traces the rise and the disastrous consequences of economic nationalism in the Danubian states. He centers his attention upon Czechoslovakia, Austria, and Hungary largely because it is possible to make statistical comparisons for these areas which formerly were part of Austria-Hungary; but he extends his comments to the other Succession States which emerged after the dismemberment of the Austro-Hungarian Empire. The study is a convincing demonstration of the follies of pursuing uneconomic policies. Political nationalism destroyed economic well-being and promoted fascism. A detailed account of economic conditions and developments in the area is given. Data are presented to show that the Austro-Hungarian Empire, compared to the Succession States, was a prosperous entity. The breaking up of the Empire led to a deterioration of economic conditions in the whole territory. An area that was economically complementary was turned into competing economies. The separate states, in their nationalistic pursuits, fostered industries in which they were deficient, but gain in one direction was offset by loss in another. If industrial output gained, agricultural output lost, and vice versa. The separate states never attained collectively the level of income which existed before partition. Hertz claims that economic dis-

equilibrium and impoverishment in the Danubian basin was one of the important factors in the rise of Hitler and fascism.—NATHAN L. SILVERSTEIN.

In view of the geographical nearness of Iran to the significant contemporary political developments of the Middle and Far East, Donald N. Wilber's *Iran; Past and Present* (Princeton University Press, 1948, pp. xi, 234, $3.00) should find a wide circle of readers eager for factual information about this country. A pawn in British and Czarist Russian imperialisms for one hundred years, this small state, which has in the last twenty years taken conspicuous steps to assert its nationalism, now finds itself critically situated in the mounting struggle between East and West. Because this may lead to future events like those of 1945-46 in Iran's northern province, Azerbaijan, which gave the Security Council its first case, the reader with primarily a political interest in the area, like the present reviewer, might well wish that the author had chosen to develop in greater detail his account of Iran's recent politics, domestic and international. Background information on the country's geography, history, culture, and economic condition is nevertheless interesting and valuable. The author's fifteen years of travel and archaeological exploration in the Middle East, including residence in Iran from 1942 to 1946, makes possible a compact and authoritative survey. A carefully selected bibliography and excellent photographs complete the book.—RUTH C. LAWSON.

INTERNATIONAL LAW AND RELATIONS

In his *History; A Guide to Peace* (Columbia University Press, 1948, pp. 377, $5.50), Erno Wittman attempts to interpret the present international scene in terms of history. The volume contains a great deal of historical information and many interesting judgments, and has a liberal amount of footnotes. In Part I, the author states his premises, which include an analysis of microcosmic and macrocosmic history and the acceptance of societies as organisms (p. 16). He quotes the story of Meninius Agrippa, who set forth the similarity of the Roman nation to the human body. This organic theory raises many questions which cannot be answered here; it suffices to ask which particular interests in a nation or in a world society are the brain, which the heart, which the blood vessels, and which serve even less exalted human functions. On page 20, society is quoted as being mechanistic; states are merely "human agglomerations;" there is no good and bad nation. But on page 151 the author writes: "The right of any group to self-determination is restricted by the rights of other groups. . . . " He speaks of a mechanical history of mass movements and of the irresistible forces behind human action; the American Civil War would have come in any case. On page 163 appears the statement: "Every

organism has something subtly in common with Utopia." On page 189, in a chapter dealing with the hierarchy of states, the author asserts that the political picture of the world "is somewhat like that of our universe; within it there are sun systems, stellar hierarchies articulated into planets and their satellites and dominated by their sun." Surely this is analogy and not serious science. Other analogies with the natural world are given to support the theory of organism. On page 28, the author writes that certain sponges are not well separated from each other, and the boundaries of pioneer communities or a feudal state in the Middle Ages are not well defined. There is discussion of cells and symbiosis, though it is not clear whether the organism is a region, a state, a family, an empire, or what. In Part II are chapters on migration, the body social and its integration, the body social and its disintegration, habitat, nation and habitat, organization, hierarchy of states, war, peace agreements, and lasting peace; and in Part III three chapters are devoted to the Second World War, Monarchia Universalis, and the Divided World Island. The conclusion is that world organization at present is not possible and that peace must depend upon the grouping of the larger powers, especially the United States and the Soviet Union.These conclusions may or may not be sound, but they do not appear to have followed logically from the complex combination of premises and theses contained in the volume under review.—LYNDON A. MANDER.

American Zionists, "through their own numerous organizations, through such Zionist-sponsored Gentile groups as the Christian Council on Palestine, through prominent individuals, . . . have flooded the country with a stream of propaganda which has swept everything before it. Books, pamphlets, magazines, newspapers, the radio, and the movies have been employed by them in an endeavor to appeal to the emotions. . . . Jewish domination of the press, the radio, and the moving picture industry have made it difficult, if not impossible, for the other side of the story to be heard." Feeling this way (p. 168), Frank C. Sakran, a Christian Arab born in Palestine, now an American citizen, and a member of the District of Columbia bar since 1922, essays to provide a corrective in his *Palestine Dilemma; Arab Rights Versus Zionist Aspirations* (Public Affairs Press, 1948, pp. vii, 238, $3.25). After a brief survey of contemporary Palestine, the land, the people, and their livelihood, the author outlines the history of the country, from *Palaeanthropos Palestinensis* to the First World War. The sketch makes fascinating reading, particularly when it translates Biblical narrative into the power politics of the times. Zionist claims based upon occupation would find scant support in this dramatic account of successive conquests, since the Arabs first inundated the area about 2800 B.C. Two-thirds of the book deals with "The Present Muddle." Against

the background of the secret Allied agreements of 1915–16, the author traces the situation from the "National Home" concept of James Balfour to the United Nations partition plan of 1947. Throughout the intricate negotiations and the pressure-politics, the crucial rôle of American Zionists and the American government is evident. For the most part, the author permits the documentary record to speak for itself through copious quotations. (Scholars, however, will object to his consistent omission of footnote citations.) Temperate in utterance, he is not unsympathetic toward the plight of the Jews; but he does object to a solution, if such it be, of their problem at the expense of the Arabs.—HENRY REIFF.

In *Retaliation in International Law* (New York: King's Crown Press, 1948, pp. 228, $3.00), Evelyn Speyer Colbert presents a careful, if not exhaustive, study of the actual practice of states with regard to retaliation. The study is divided into two main sections. The first is concerned with peacetime reprisals, and in it the author examines private reprisals, particularly as practiced in England, earlier public reprisals, and public reprisals in the nineteenth and twentieth centuries. In the second section, devoted to retaliation in naval war, separate chapters deal with neutral retaliation in the seventeenth and eighteenth centuries, the Napoleonic wars, and the First World War. It is the author's conclusion that, whereas private reprisals were closely regulated (primarily by local law) both as to justifying causes and as to remedies employed, "public reprisals and wartime retaliation, on the other hand, have remained almost completely free of regulation—either as to justifiable cause or as to appropriate measures of redress" (p. 5). Opportunity for abuse, of course, results. Yet, despite occasional recourse to excessive measures, peacetime public reprisals have in the main actually been employed as a means of law enforcement. In the case of naval warfare, on the other hand, the doctrine of reprisal has been used largely as an excuse for ignoring existing law rather than for compelling its observance. Presumably, in view of the evident potentialities for abuse, Mrs. Colbert would welcome abandonment of the principle of retaliation by individual states altogether, rather than an attempt to secure greater regulation of its application. She points out, however, that it is by no means certain that the U.N. Charter achieves that end as regards peacetime reprisals. Apparently in her opinion the widest possible acceptance of the optional clause is, therefore, desirable " . . . for purposes of limiting as opposed to abolishing peacetime retaliation. . . . " (p. 205). Nothing short of elimination of war itself, however, can assure that states will not have recourse to the doctrine of reprisal to avoid inconvenient laws of naval warfare, although a drastic revision of those laws and the establishment of an international prize court might tend to reduce the occasions giving rise to the temptation so to do. In her introduction, the author indicates that the purpose of her study is to determine "the function of a

doctrine of retaliation in an international system—whether it serves as an instrument of law enforcement or whether it is merely an instrument for the rationalization of national policy; whether it is a practice that must disappear if world organization is really to be achieved or whether it has anything of value to offer to such organization " (p. 6). That the section labeled "Conclusions" really squarely answers those questions may be open to some doubt, but there can be none that the book as a whole evidences able scholarship and is clearly and concisely written. Incidentally, not only those concerned with reprisals as such, but likewise those interested in the historical development of certain of the concepts today commonly associated with the rubric "Responsibility of States," should find this volume of value.—VALENTINE JOBST, III.

Doris Appel Graber's *The Development of the Law of Belligerent Occupation, 1863–1914; An Historical Survey* (Columbia University Press, 1949, pp. 343, $3.00) is described by the author as a "study of the development of belligerent occupation from 1863 to 1914, as reflected in contemporary international agreements, military manuals, and literature of international law." Lieber's Code, the Brussels Code of 1874, the Oxford Code of the Institute of International Law in 1880, and the provisions regarding belligerent occupation of the Hague Conferences of 1899 and 1907, are regarded as the great landmarks in the development. Practice under the codes is reported only to the extent that it is recorded in the work of the publicists. Principal topics considered are the nature of belligerent occupation, duties of the population towards the occupant, government of occupied regions, treatment of public and institutional property, protection of personal rights and private property, and requisitions and contributions. "Comparing the Lieber and 1907 Hague codes as a whole, the most striking feature is the relative similarity of provisions, yet the difference in emphasis on the use which the occupant may make of his powers. The stress in the Lieber code is on the occupant's rights, which he should exercise with limitations until military necessity dictates otherwise, whereas the emphasis in the Hague code is on the duty of the occupant to preserve existing conditions in the occupied region as much as possible, and not to use his broad powers except in case of need." The author concedes that the rules laid down in the literature "seem fragmentary indeed and inadequate to guide occupation practices," particularly in complex occupations like the ones of World Wars I and II, which raised a "multitude of legal questions about the rights and duties of occupants in particular situations and the legal effects of the occupants' actions after the war." Data for the study of occupation practices are "scanty and unreliable. " Yet the book is a convenient summary, with a succinct chart of the texts in an appendix, and a competent bibliography. The author surely merits the *vita* customary in books of this sort, which has been omitted.—LLEWELLYN PFANKUCHEN.

The publication by the U. S. Department of State, in January, 1948, of a volume of documents on *Nazi-Soviet Relations, 1939–1941*, evoked four counterblasts from the Soviet Information Bureau, under the general title of "Falsifiers of History and Historical Notes," and was the alleged reason for the appearance of two very interesting volumes in the summer of 1948, published by the Ministry of Foreign Affairs of the U.S.S.R. These volumes contained English translations of secret documents of the German Ministry of Foreign Affairs, captured by the Soviet army in Berlin, and private papers of Herbert von Dirksen, German ambassador to Britain in 1938–39, found on his estate at Groditzberg, in addition to a few documents already published in other works. All of this material has been reprinted in this country in two volumes of *Documents and Materials Relating to the Eve of the Second World War* (International Publishers, 1948, Vol. I, pp. 314, $2.75, Vol. II, pp. 243, $2.50). According to the Soviet Information Bureau, these captured documents "show that, essentially, the Anglo-French policy was aimed at isolating the Soviet Union" and "had flung the gates wide open for Hitlerite . . . aggression against the Soviet Union." Actually, like the State Department volume, the Soviet publication does little more than provide details of agreements and policies which were already known. This is embarrassing enough. Most of the documents in Volume I relate to the sorry story of the tragedy of Czechoslovakia and the events preceding, during, and following the Munich conference of late September, 1938. Only eleven documents in the Dirksen papers, which are published as Volume II of this collection, fall within the period covered in the first volume, whereas the remaining seventeen cover the climactic weeks from July 10 to August 25, 1939. The background of von Dirksen's many illuminating reports is provided in a forty-three page memorandum on relations between Germany and Britain during his mission (May, 1938–August, 1939), prepared from memory in September, 1939. In each volume, photostatic copies of portions of the documents (poorly reproduced), and a name index, add to the value of the collection.—NORMAN D. PALMER.

A reviewer for this journal is being neither captious nor unkind to dismiss in a few lines Heinz Lunau's *The Germans on Trial* (New York: Storm Publishers, 1948, pp. 180, $2.50), which, as the author confesses (p. 10 f), is not addressed to an informed public. It may even be doubted whether so slight and inconsequential a political tract would have appeared if the title did not allow the publishers to capitalize upon popular interest in the war trials. The trials, however, are hardly mentioned. What we are given, rather, is a ranting and repetitious defense of the German people, based upon grounds no better than that to err is human and German, but no more German than British or French or American. Mr. Lunau is animated by a warm affection for both the land of his birth and

the land he has adopted, and he is anxious for a reconciliation between the two. But sincerity and affection do not make up for misunderstanding of Americans and their institutions, bizarre interpretations of history, politics, and international law, and a strained use of the vernacular which careful editing by the publishers could readily have avoided.—JAMES T. WATKINS, IV.

POLITICAL THEORY AND MISCELLANEOUS

F. S. C. Northrop's *The Logic of the Sciences and the Humanities* (Macmillan Co., 1947, pp. xiv, 402, $4.50) is another stimulating and significant book from the pen of one of America's leading philosophers. The book presents the thesis that there is no single scientific method, but there are many scientific methods, each of which must be adapted to the problems to be solved. As the author puts it: "The emphasis upon the primacy of the character of the problem results in the relativity of scientific method to the type of problem before one and the stage of inquiry with respect to that type of problem." Attention is directed to the difference between problems of fact and problems of value in the social sciences and humanities, with the attendant differences in scientific methods. The concluding chapters indicate the manner in which a scientifically verified normative economic, political, aesthetic, and religious theory is valid for everyone. They also sketch the specific ideology which a contemporary application of this scientific method prescribes. According to this theory, the statesman, when he acts scientifically and wisely, must think and operate literally in two worlds. He must know things as they are; he must also know things as they ought to be. Scientifically grounded wise statesmanship, according to Northrup, consists in possessing scientifically verified factual theory concerning what is the case, and scientifically verified normative social theory of what ought to be the case, and then achieving as much of the ideal as possible changes in the factual will permit. That form of society is the good one which embodies in the emotions of men a sensitivity to nature in its aesthetic aspect and orders its education, its intellectual outlook, and its social institutions in the light of the latest verified scientific theories.—HAROLD F. GOSNELL.

Miss D. M. Brodie's edition of Edmund Dudley's treatise, *The Tree of Commonwealth* (Cambridge, At the University Press; New York, Macmillan Co., pp. viii, 111, $2.25), is an extremely competent and scholarly job of editing a text of which there are several manuscripts, involving minor variations. The work itself, written by a man who played a major part in government under Henry VII, and who was, with dubious justice, condemned for treason under Henry VIII, as a consequence of that work and of the enmities made in its course, is a minor example of the *genre De Regemine Principum*, and was intended for the instruction and ad-

vice of the heir to the throne. It contains no startling ideas, no systematic analysis of fundamental principles, but, as the editor points out in her very brief yet lucid introduction, it shows a nice combination of the accepted ideas and proprieties of the time, with a healthy sense of political realities and awareness of the emergent forces of the day. Dudley, whose career had been in the service of a monarch largely instrumental in forming the post-medieval English nation-state, in creating the centralized administration for it, in overcoming the remnants of feudalism, and in preparing the ground for divine right monarchy, insisted that the king must properly be an instrument of law and justice, rather than an arbitrary ruler. He saw the danger that a large and powerful administrative class might be as harmful to liberty under the law as older feudal nobility was to law and order itself. His own life, from the beginning of his career, when, though himself not of the prosperous group, he came to play a major part in the government of the city of London, through the years when, as a servant of Henry, he came into conflict with the new merchant leaders of that class in enforcing royal law and regulations, illustrates at once the slow rise of that new class and the fact, of which we are increasingly aware, that there were conflicts of interest between the rising merchants and the royal power, as well as coöperation between them. In general, this book is interesting as an illustration of awareness of genuine interest conflicts, and of the use of conventional moralities in their conduct. It reveals, too, the decline of religious ardor without abandonment of belief, and the trend toward secularism which is so important in the making of the modern nation-state. Nevertheless, while such editions are always to be welcomed as raw material for the writing of the history of political institutions, so long overdue, this particular book will probably be of interest only to the specialists in the period, with the possible exception of the amateur antiquarian who enjoys quaint phraseology and spelling, and the way in which modern issues and ideas peeped out from behind antique language and ancient forms.—Thomas I. Cook.

Among the numerous biographies of the founder of "scientific socialism" which have come out since Mehring's publication, in 1918, of a first thorough study of Marx' life, Isaiah Berlin's *Karl Marx* (Oxford University Press, 1948, pp. 280, $2.00) is probably the best brief treatment of the subject. It is therefore very pleasing that the second edition of the slender volume which first appeared in England in 1939 is now easily available in this country. With much sympathetic interest, the author sketches the turbulent life story of the revolutionary, the intrinsic value of his achievements, and their lasting historical significance. At the same time, the author points out the shortcomings of the work and the faults of the man. Thus, in Berlin's presentation, Marx appears in his true human stature; he is neither the hero of a Mehring or a Beer, nor the villain of a

Barzun or a Schwarzschild. Berlin's book ranks with such earlier and more detailed works as those of Nicolaievsky and Maenchen-Helfen or Rühle, though differing somewhat in emphasis, particularly from the latter. Berlin focuses on Marx' political activities against the background of his philosophical ideas. Indeed the chapter on "The Philosophy of the Spirit," tracing Marx' concept of dialectical growth back to Leibnitz, is the most original one in the entire book. Consequently, the author devotes little space to Marxian economics, and his exploration of Marx' character structure does not compare with Edmund Wilson's depth of psychological analysis. Nevertheless, the demand for a short popular Marx biography has been met. It remains for a scholar with the learning and judgment of Mr. Berlin to attempt a detailed and exhaustive Marx biography in which the fullest use would be made both of the rich historical material now available and of the insights of modern dynamic character research.—Ossip K. Flechtheim.

The growing international importance of Marxism makes an understanding of the doctrines of Marx and Engels increasingly needful. M. M. Bober's excellent critical analysis, *Karl Marx's Interpretation of History* (2nd ed., Harvard University Press, 1948, pp. x, 437, $6.00) provides a thorough, integrated exposition and appraisal of the fundamentals of Marxism based on an exhaustive examination of the writings of these Marxist leaders. This second edition has been revised to expand topics, change emphases, and add new material. Sections have been added and more than two-thirds of the book rewritten. The plan of development used conforms with the sequential patterns that Marx discerned in history: the material basis of history is first considered; secondly, the rôle of mankind—the nature of man and class—is treated; thirdly, the book deals with the position accorded to ideological factors; and, lastly, the trend of history in the capitalist and communist stages is developed. This part of the book is mainly a careful, impartial analysis. As an economist, Professor Bober is particularly interested in Marxist claims to prescience in economic theory; but it is his conclusion that "Marx was preeminently a revolutionary philosopher of history," and uniform treatment of all aspects of the social philosophy of Marx is included. In the final third of the book, "Critical Observations of Marx's Theory," the Marxist doctrine is subjected to scrutiny and criticism with respect both to the logical adequacy of the theories and to their conformity to the empirically established facts of the last century. This part of the book is particularly useful for the student of social theory. Viewed in whole, this is an invaluable study of basic Marxist doctrines. The analysis is exhaustive and dispassionate, and the criticism is penetrating and significant without detracting from the importance of Marx in world history.—Thomas P. Jenkin.

Although a notice here of the late Leonard Salter's *A Critical Review of Research in Land Economics* (University of Minnesota Press, 1948, pp. 258, $4.00) may be somewhat surprising, the work is more than a mere treatise in a specialized field of economics; it is an important contribution to social science research method. The book is a critical analysis of some 500 reports covering a period of forty years of research in agricultural economics. The criteria which the author applies in appraising these research efforts are based upon the concepts of scientific method developed by John Dewey. Salter criticizes the inductive establishment of superficially causal laws and relationships and, on the constructive side, pleads for relating research to purposes (ends), and especially to social purposes, by means of experimental correlations derived from actual human experiences. He spares no one in his critique, for the researches of many distinguished workers are weighed and found wanting. All social science research could benefit from similarly acute analysis and criticism. It is noteworthy that much of the research which Salter found methodologically unsound produced data providing the basis for new and often far-reaching public policies, e.g., the studies discussed in Chapter V which contributed to rural zoning and related legislative measures in the Great Lakes cut-over area. Salter's presentation raises a number of fundamental questions concerning the relation between social research and public policy formulation. Lack of space prevents more than a listing of some of these: When can research data be considered adequate for governmental action, and how is the administrator or legislator to assess the reliability of such data? Can the political scientist perform a vital function in this connection by carrying out what Professor Charles M. Hardin has called "programmatic research" in order to provide techniques and data for assessing public policies and programs? Because it poses questions of this sort, the book merits the attention of political scientists.—NORMAN WENGERT.

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Philosophers. A challenge to philosophers in the atomic age. *Paul Arthur Schilpp.* Philosophy. Jan., 1949.

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———. Political statistics. *Earl Latham.* Jour. of Politics. Nov., 1948.

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GOVERNMENT PUBLICATIONS

MILES O. PRICE

Law Library, Columbia University

AMERICAN

UNITED STATES

Commerce Department

Census Bureau. Forecasts of population and school enrollment in the United States: 1948 to 1960. Washington, Govt. Ptg. Off., 1949. 16 p. (processed)

——— Internal migration in the United States: April, 1947, to April, 1948. Washington: Govt. Ptg. Off., 1949. 8 p. (processed).
——— State aid to local governments. Govt. Ptg. Off., 1948. 52 p. (processed)

Congress

House of representatives. Federal corrupt practices act, Hatch political activities act, and act requiring name of person responsible for publication or distribution of certain political statements . . . prepared by H. Newlin Megill. Washington: Govt. Ptg. Off., 1948. 19 p. 10¢.
Senate. Finance committee. Foreign assets and liabilities of United States and its balance of international transactions, report to Senate committee on finance by National Advisory Council on international monetary and financial problems. Washington: Govt. Ptg. Off., 1948. 177 p.
Judiciary committee. Judicial code and judiciary, hearings . . . 80th Cong., 2d sess., on H.R. 3214. . . . Washington: Govt. Ptg. Off., 1948. 340 p. 75¢. (The Judicial Code was codified and enacted into positive law by the 80th Congress. This is an important document for the understanding of the judiciary as at present constituted.)

Library of Congress

National censuses and vital statistics in Europe, 1940–1948 supplement; an annotated bibliography. Prepared by Henry J. Dubester. Washington: Govt. Ptg. Off., 1948. 48 p. 15¢.
Presidential inaugurations; a selected list of references. Washington, Library of Congress Card Division, 1949. 58 p. (multilithed). 40¢.
Representative positions in Library of Congress. Washington: Govt. Ptg. Off., 1948. 576 p. $3.00.
The United States and postwar Europe. A bibliographical examination of thought expressed in American publications during 1948. Washington, Library of Congress, 1909. 123 p. (processed) 80¢.
Public Affairs Bulletins:
No. 64: Limitation of debate in the United States Senate. George B. Galloway. Washington, Library of Congress, 1948. (mim.) 30 p.
No. 65: Anti-discrimination legislation in the American states. W. Brooke Graves. Washington, Library of Congress, 1948. 92 p. (mim.)

National Military Establishment

Civil defense planning office. Civil defense for national security. Washington: Govt. Ptg. Off., 1948. 301 p. $1.00.

Office of Military Government for Germany (U.S.)

Ownership and control of the Ruhr industries. Special report to the military governor, November, 1948. 1948. 49 p. (processed)
Property control: History, policies, practices, and procedures of the United States area of control, Germany. Special report to the military governor, November, 1948. 71 p. (processed)

President

Economic report . . . transmitted to the Congress, January, 1949. Washington: Govt. Ptg. Off., 1949. 140 p. 45¢. (Contains the annual economic review by the Council of Economic Advisers.)

State Department

Office of public affairs. Fact sheet on the displaced persons act of 1948. Washington, State Department, 1948. 5 p. (mim.)

——— Twenty-five questions and answers on the proposed international trade organization. Washington, State Department, December, 1948. 16 p. (processed)

Research for Far East division. A statistical analysis of the Italian election results. Washington, State Department, 1948. 99 p. maps. (mim.)

The following in the numbered series of State Department publications have appeared, all from the Government Printing Office, 1948 or 1949. Since most of the numbered publications appear also in the Treaties and Other International Acts series, they are not listed here.

2866. Proceedings and documents of United Nations Monetary and Financial Conference, Bretton Woods . . . 2 v. ($3.50, $2.25) ("These volumes . . . are intended primarily as a collection of working papers.")

3263. Ninth International conference of American states. Bogotá, Colombia, March 30–May 2, 1948. 317 p.

3323. Thirty-first session, International Labor Conference, San Francisco, California, June 17–July 10, 1948. Report of the United States delegation. 100 p. 25¢.

3351. The Foreign Service Institute. Catalog and general information, January, 1949. 36 p.

3371. Fifth report to Congress on assistance to Greece and Turkey, for the period ended September 30, 1948. 36 p. 15¢.

3373. Toward a stronger United Nations: Questions and answers concerning the status and development of international coöperation. 12 p. (processed)

3377. Collective security in the North Atlantic area. 6 p. (Foreign affairs outlines: Building the peace, no. 19.)

3381. Universal declaration of human rights, approved by the General Assembly [of the United Nations] at its plenary meeting on 10 December, 1948. 6 p. 5¢.

3392. Coördinating foreign aid. 22 p. 10¢.

Territorial papers of the United States, Vol. XVI. Washington: Govt. Ptg. Off., 1948. $3.25.

Tariff Commission

Operation of trade agreements program, June, 1934, to April, 1948, pt. 1, summary, prepared in conformity with executive order 9832. . . . Washington: Govt. Ptg. Off., 1948. 65 p. (Tariff Commission, Report 160, 2d series.) 20¢.

Treasury Department

Tax research division. Federal-state tax coördination, Treasury tax study. [Reprint 1948.] Washington: Govt. Ptg. Off., 1948. 32 p.

The Treasury Department has released from their confidential status "Preliminary reports on selected financial laws, decrees, and regulations" concerning Germany, Italy, Albania, Austria, Belgium, Denmark, Hungary, Norway, and Yugoslavia, originally issued from 1943 to 1945. These are all processed and were prepared by the General Counsel's office. They are not priced.

STATE AND TERRITORIAL

CALIFORNIA

Finance department. Administration division. Organizational charts [for] California state government. Sacramento, 1948. 18 p.

University of California, Berkeley. The political theory of bolshevism; a critical analysis, by Hans Kelsen, Berkeley, University of California Press, 1948. 60 p. (Univ. of California publications in political science, v. 2, no. 1.) $1.00.

——— *Bureau of public administration.* The problem of government in the San Francisco Bay region, by John C. Bollens. Berkeley, 1948. 162 p.

——— *at Los Angeles. Bureau of government research.* Coördinated public planning in the Los Angeles region, by J. N. Jamison. Los Angeles, 1948. 198 p. (processed) (Studies in local government, no. 9.) $1.00.

——— The incorporation of cities under California law, by M. W. Jensen. Los Angeles, 1948. 8 p. (mim.)

COLORADO

Denver. University of Denver. Bureau of business and social research. Financing municipal government in Denver; a review of revenue and expenditure trends. . . . E. T. Halaas and H. E. Hurst. Denver, 1948. 84 p. (mim.)

HAWAII

University of Hawaii, Honolulu. Legislative reference bureau. Civil service in the territory of Hawaii, by Ada Mae Rich. Honolulu, 1948. 21 p. (Report no. 6, 1948)

——— Governmental expenditures in Hawaii, by Robert M. Kamins. Honolulu, 1948. 17 p. (Report no. 5, 1948)

——— The tax system of Hawaii, by Robert M. Kamins. Honolulu, 1948. 40 p. (Report no. 4, 1948)

ILLINOIS

Legislative council. Publications:

No. 87. Selection of judges. Research report on Proposal 265 . . . Springfield, 1948. 26 p. (mim.)

No. 88. Control of ground water. Research report on Proposal 266. Springfield, 1948. 26 p. (mim.)

No. 89. Publication requirements as to local government finances. Research report on Proposal 251. Springfield, 1948. 23 p. (mim.)

No. 90. Facilitating election registration in downstate Illinois. Research report on Proposal 272. Springfield, 1948. 15 p. (mim.)

No. 91. Statutory control of private trade schools. Springfield, 1948. 46 p. (mim.)

No. 92. Financial aid for local governments. Report on Proposal 256. Springfield, 1948. 44 p. (mim.)

University of Illinois. Library. Lenin and the organization of the Bolshevik party, 1897–1903, by N. F. Norman. Urbana, Gift & Exchange Dept., Library, 1948. 12 p. 25¢. (Thesis abstract)

KANSAS

University of Kansas, Lawrence. Bureau of government research. Kansas state board of agriculture; a study in Kansas administrative history, by E. O. Stine. Lawrence, 1948. 77 p. (Govt. research series no. 5.)

MARYLAND

Hall of records commission. Calendar of Maryland state papers, no. 3: The brown books of Roger Thomas. Annapolis, 1948. 180 p. (Pub. no. 6) $2.00.

Legislative council. Report to the general assembly of 1949. Proposed bills. Volume 1. [Annapolis?], 1948. 258 p. (Bills are printed in full)

——— *Research division, Baltimore.* The Bouse act; research report . . . submitted July, 1948, by Carn N. Everstine. Baltimore, 1948. 39 p. (Research report no. 27)

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MISSISSIPPI

University of Mississippi, University. Bureau of public administration. Aids for governing; an analysis of technical assistance in Mississippi, by Robert Baker Highsaw and Edward McKenna Johnson, Jr. University, 1948. 62 p. (State administration ser. no. 6)

——— Forms of municipal government in Mississippi, by Robert Baker Highsaw. 3d ed. University, 1947. 36 p. (Municipal study series no. 3.)

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Civil service department. Personnel council. Conference . . . with department representatives, held at Albany, September 9, 1948. Albany, 1948. 56 p.

Law revision commission. Report and study relating to problems involved in conferring upon newspapermen a privilege which would legally protect them from divulging sources of information given to them. Albany, 1949. (Legis. doc. 1949, No. 65 A)

Power authority of the State of New York. The St. Lawrence project; public need for its completion. Albany, 1948. 216 p.

Temporary commission on need for a state university. Costs and financing of higher education. Paul Studenski and E. T. Baikie. Albany, Bureau of publications of state education department, 1948. 148 p., tables. (Legis. doc. (1948) no. 34.) 40¢.

OKLAHOMA

Legislative council. County government, an analysis, by John Paul Duncan. Oklahoma City, 1948. 43 p. (Constitutional studies no. 12)

——— County government (constitutional data), by John Paul Duncan. Oklahoma City, 1948. 42 p. (Constitutional studies no. 13)

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PUERTO RICO

Office of Puerto Rico, Washington, D. C. Documents on the constitutional history of Puerto Rico. Washington, D. C., 1948. 151 p.

——— Puerto Rico's potential as a site for textile, apparel, and other industries. Washington, D. C. [1948?], 64 p. (Included because of legislative provisions in it.)

SOUTH CAROLINA

University of South Carolina, Bureau of public administration. Columbia city government, by Christian L. Larsen and Robert H. Stoudemire. Columbia, 1948. 97 p. (Publication no. 6)

——— Technical services directory for South Carolina officials. Columbia [1948?] 225 p. (Directory of organizations, national and local, classified by fields of activity. Definitely useful outside of South Carolina)

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University of Texas, Austin. Bureau of municipal research. The state property tax in Texas, by Lynn F. Anderson. Austin, 1948. 132 p. (Municipal studies no. 33.) $1.00.

WASHINGTON

University of Washington, Seattle. Bureau of governmental research and services. Information bulletins: No. 99. Ordinances licensing juke boxes in Washington cities. Seattle, 1948. 10 p. No. 106. Ordinances licensing punch boards in Washington cities. Seattle, 1948. 9 p. No. 107. Municipal business and occupational taxes and/or license fees on public utilities. Seattle, 1948. 5 p. Reports: No. 90. The administrative supervision of state public institutions, by Donald H. Webster. Seattle, 1948. 59 p. No. 91. Washington state government; administrative organization and functions, by Donald H. Webster and others. Seattle, 1948. 121 p. $2.50. No. 94. House joint resolution no. 13, proposed county-city constitutional amendment. Proceedings of the section on county-city consolidation, 13th Annual Institute of Government. Seattle, 1948. 43 p.

WISCONSIN

Legislative council. Correlation of law enforcement in Wisconsin; a study prepared for the subcommittee on reclassification and review of administrative agencies and state services, by Philip S. Habermann. Madison, 1948. 141 p. (mim.)
University of Wisconsin, Madison. Bureau of business research and service. Federal regulation of insurance [by] John W. Cowee, under the direction of Charles C. Center. Madison, 1948. 89 p. (Bul. Univ. of Wis., serial no. 3043)

FOREIGN AND INTERNATIONAL

AUSTRALIA

Queensland. Brisbane city council. Brisbane statistics embracing the period from the inception of the council in 1925 to the end of the financial year 1946–47. Brisbane, Govt. Printer, 1948. 147 p.

CANADA

Department of external affairs. "External Affairs," is the title of a monthly bulletin begun in 1949 as a printed publication (having formerly been issued with a limited circulation, in mimeographed form), at $1.00 per year, from the King's Printer, Ottawa.

CZECHOSLOVAKIA

Ministry of information. Constitutional act of May 9, 1948. The constitution of the Czechoslovak republic. Prague, 1948. 79 p.

GREAT BRITAIN

Colonial office. Commission on civil services of Kenya, Tanganyika, Uganda, and Zanzibar. London, H.M.S.O., 1948. 244 p. 4/. (Colonial 223)
Parliament. Command papers, 1948. 7572: European coöperation. 72 p. 45¢.

MEXICO

President. Garantía a los derechos de las personas respeto a las libertades. Características de la política actual . . . Primer informe presidencial al H. Congreso de la Unión. Mexico, 1947. 75 p.

——— Informe que rinde al H. Congreso de la Unión . . . Agosto de 1948. Mexico, 1948. 77 p.

——— México en al campo internacional, responde a lo que Bolívar quería para los pueblos hechos por el independientes. . . . Mexico, 1948. 68 p.

PARAGUAY

Paraguayan Embassy, Washington, D. C. In July, 1948, volume 1, number 1, of an English language Bulletin appeared.

POLAND

Polish research and information service, 250 West 57th Street, New York 19, N. Y. Cultural life in Poland (Part I) New York, 1949. 13 p. (mim.)

——— *Poland and the Ruhr question.* A statement by Mr. Zygmunt Modzelswski, Polish foreign minister . . . New York, 1948. 18 p.

ROUMANIA

Ministry of arts and information. Nationalization of industrial banking, insurance, and transport enterprises. Bucharest, 1948. 43 p.

TRIESTE

Report of the administration of the British-United States zone of the Free Territory of Trieste, 1 July to 30 September 1948 . . . 37 p. (mim.)

YUGOSLAVIA

Embassy, Washington, D. C. Yugoslavia: Progress of the 5-year plan. [Addresses by Marshal Tito and others] Washington, 1949. 48 p.

——— Political report of the central committee of the Communist party of Yugoslavia. Josip Broz Tito. Beograd, 1948. 136 p.

——— Statement of the central committee of the Communist party of Yugoslavia in regard to the resolution of the information bureau of the Communist parties on the situation in the Communist party of Yugoslavia. Beograd, 1948. 24 p.

INTERNATIONAL COURT OF JUSTICE

Reports of international arbitral awards. Recueil des sentences arbitrales. Vol. 1 [1920–1925]. [Leyden] 1948. 614 p. (United Nations publications, 1948, v. 2.)

PAN AMERICAN UNION

Organization of American States. Council. Acta de la sesion extraordinaria . . . de 30 de julio de 1948. Provisional. Washington, Pan American union, 1948. 123 p. (mim.)

UNITED NATIONS

Agreement between the United Nations and the Universal postal union. Lake Success, N. Y., 1949. 12 p. (Text in English and French.)

Agreement between the United Nations and the World health organization. Lake Success, N. Y., 1949. 23 p. (Text in English and French)

Conference on freedom of information, Geneva, 1948. Final act. Lake Success, N. Y., 1948. 41 p. (1948. XIV. 2)

Economic affairs department, Fiscal division. Argentine. Public finance data, 1938–1947. Lake Success, N. Y., 1948. 7 fold. tables. (U.N. doc. E.CN.8/31/Annex 9) "This is a preliminary paper giving part of the information which will later be contained in the 'Public Finance Survey' of each country." Others already issued are on Belgium, Mexico, China, India, etc.

——— *Statistical office.* National income statistics, 1938–1947. Lake Success, N. Y., 1948. 150 p. (U.N. publications, Sales no. 1948. XVII. 2)

——— Technical assistance for economic development available through the United Nations and the specialized agencies. Lake Success, N. Y., 1948. 102 p. (U.N. publications, Sale no. 1948. II. B. 2)

Economic and social council. Étude de la situation apatrides, présentée par le secrétaire général. Ier fasicule. Lake Success, N. Y., 1949. 166 p. (mim.) (E/1112) (Occasionally United Nations documents are listed in a language other than English, because the first copy received is in that language. However, by the time this list is published, the English language edition will be available.)

——— National and international action to achieve or maintain full employment and economic stability. Lake Success, N. Y., 1949. 178 p. (E/1111)

——— Preliminary report on the work accomplished by the League of Nations in fiscal matters. Lake Success, N. Y., 1949. 34 p. (mim.) (E/CN.6/78)

——— *Commission on the status of women. Third session.* Detailed comparative report showing the existing disabilities of women in the field of educational and professional opportunities. Lake Success, N. Y., 1949. 63 p. (E/CN.6/78)

——— Treaties and conventions in the field of the nationality of women. Lake Success, N. Y., 1949. 67 p. (mim.) (E/CN.6/79)

——— *Fiscal commission.* Questionnaire on the tax treatment of foreign nationals, assets and transactions. Reply of the United States government. Lake Success, N. Y., 1948. 54 p. (mim.) (E/CN.8/46/Add. 3) (This is one of a series of such statements, including all member nations. *See also* Tax treatment of foreign nationals, resources and transactions. . . . Statements by member governments. Lake Success, N. Y., 1948. 93 p. (mim.) (E/CN.8/45)

General assembly. Transfer of the assets of the League of Nations. Report . . . Lake Success, N. Y., 1948. 8 p. (mim.)

Maritime conference, Geneva, 1948. Final act and related documents. Lake Success, N. Y., 1948. 55 p.

Palestine. Acting mediator on Palestine. Progress report . . . Assistance to refugees. (Supplement to Part 3 of the Progress report of U.N. Mediator on Palestine (A. 648). Paris, 1948. 11 p.

——— *Mediator on Palestine.* Progress report of the U.N. Mediator on Palestine. Paris, 1948. 57 p.

Public information department. Weekly index to documents and publications of the United Nations and the specialized agencies, received at Lake Success . . . Volume 1, number 1 (Experimental issue). 14 January 1949. (There is no assurance that this index will be continued.)

——— What the United Nations is doing: Economic commission for Latin America. Lake Success, N. Y., 1948. 20 p. 15 ¢.

——— For non-self-governing territories. Lake Success, N. Y., 1948. 24 p. 15¢.

——— World war on tuberculosis. Lake Success, N. Y., 1948. 18 p. 15¢.

Secretariat. For fundamental human rights; an account of the work of the United Nations. Lake Success, N. Y., 1948. 126 p.

Secretary-general. Survey of international law in relation to the work of codifica-

tion of the international law commission. . . . (Memorandum submitted by the Secretary-general.) Lake Success, N. Y., 1948. 70 p. (1948. v. 1.)
Security council. Appendices to the special report of the committee of good offices on the Indonesian question to the Security Council dated 12 December, 1948. Lake Success, 1948. 113 p. (mim.) (S/1117/Add. 1)
Social affairs department. Housing and town and country planning. Bulletin 1, November, 1948. $1.50 per issue. (Contains extensive bibliography.)
Special committee on the Balkans. Supplementary report . . . covering the period from 17 June to 10 September, 1948. Lake Success, N. Y., 1948. 17 p.
Temporary commission on Korea. First part of the report . . . vols. 1–3. Lake Success, N. Y., 1948.

NOTES ON SOME RECENT DOCUMENTARY MATERIALS

JAMES B. CHILDS
Library of Congress

Under the constitution of France promulgated on October 27, 1946, the "Parlement," or legislative establishment, consists of the Assemblée nationale and the Conseil de la République, in addition to which operate in special spheres two related bodies, the Conseil économique and the Assemblée de l'Union française. A brief statement about the current documentation of these bodies may be helpful in understanding the functioning of the legislative process.

The Assemblée nationale, which by article 13 "vote seule la loi," met for the first time on November 28, 1946. Stenographic reports of its proceedings are printed currently as supplements to the daily *Journal officiel de la République française* entitled *Débats parlementaires, Assemblée nationale, Compte rendu in extenso des séances, questions écrites et réponses des ministres à ces questions,* later reprinted at the Imprimerie des Journaux officiels in permanent volumes of convenient size with blue covers as the *Annales de l'assemblée nationale: Débats.* Of the permanent consolidated edition of the debates, vol. 1 of the first legislature, session of 1946, covers the sittings from November 28 through December 27, and includes on pp. 7–36, the "examen des pouvoirs" or report in great part on the elections of November 10 to the National Assembly, arranged department by department. Vols. 2 to 8 of the first legislature (vol. 1 to 7 of the session of 1947) cover the sittings from January 14 through October 9, and the subsequent volumes are being printed fairly regularly.

Bills introduced into the Assemblée nationale, reports of committees on these, and certain other documents relating to the functioning of the body are printed by the Imprimerie de l'Assemblée nationale as *Impressions* in a numbered series, small quarto format, with very legible type, intended mainly for distribution to the members, and also consolidated and reprinted from time to time in rather small type as supplements to the *Journal officiel* entitled *Documents parlementaires, annexes aux procès-verbaux des séances.* The *Impressions* containing the different sections of the Budget are usually in large quarto with blue paper covers. A calendar of the day to day proceedings is printed in small octavo format under the title *Feuilleton.* Proceedings of the committees on legislative and other matters are summarized in a small octavo *Bulletin des commissions,* the practice of printing hearings in full being seldom if ever resorted to. Bills and resolutions as voted by the National Assembly are printed regularly and separately for the use of members in a small octavo series entitled *Projet de loi adopté, Résolution adoptée,* or *Texte définitif,* in the case of final enactment. Upon approval, the enactments are promulgated in the *Journal officiel,*

and at the end of sessions printed annually in permanent volume form by the Imprimerie de l'Assemblée nationale as *Recueil des lois adoptées par l'Assemblée nationale . . . préparé par les soins du secrétaire général du présidence*, including references to the promulgation in the *Journal officiel* and to the legislative documents, but omitting the texts of treaties and conventions as well as certain tables annexed. Fascicule 1 of the *Recueil des Lois* covers the period December 22, 1946–January 7, 1947.

At the beginning of the first legislature, a small pocket directory (xxiv, 620 p.) of the National Assembly was printed by the Imprimerie de l'Assemblée Nationale under the title *Notices et portraits, 1946*, containing ordinarily a portrait and brief sketch of each member, arranged by departments, Algeria and the colonies being grouped at the end. A briefer directory keeping up to date with changes in committee memberships, etc., seems to be issued annually under the title *Liste par ordre alphabetique et par departements de mesdames et messieurs les deputes. . . .* It may be noted that there are more than thirty women deputies in a membership of about six hundred.

The Conseil de la République, which according to article 20 of the Constitution "examine, pur avis, les projets et propositions de loi votés en première lecture par l'Assemblée nationale," has a membership of 315, including 50 elected by the National Assembly, and held its first session on December 24, 1946. A stenographic report of the proceedings of the sittings of the Council of the Republic is printed currently as a supplement to the daily *Journal officiel* under the title *Débats parlementaires, Conseil de la République, Compte rendu in extenso des séances, questions écrites et réponses des ministres à ces questions.* Legislative bills, reports of committees on these and other matters, as well as certain other documents pertinent to the work of the Council, are printed by the Imprimerie du Conseil de la République in a numbered series of *Impressions*, small quarto format with very legible type, intended mainly for distribution to the members, and reprinted in consolidated form from time to time with much smaller type as a supplement to the *Journal officiel* with the title *Documents parlementaires, annexes au procès-verbaux des séances.* A day by day calendar of the proceedings is issued under the title *Feuilleton*, and a summary of the proceedings of committees under the title *Bulletin des commissions*, both in small octavo format printed by the Imprimerie du Conseil de la République. At the beginning of the legislature, a handy directory (xxi, 314 p.) entitled *Notices et portraits, 1947*, containing ordinarily a portrait and brief biography of each member arranged in alphabetical order, is printed by the Imprimerie du Conseil de la République mainly for distribution to the members, with the stipulation that copies are not to be sold.

The Union française is dealt with in title VIII of the constitution. For the purpose of advising upon legislative bills dealing with the overseas territories submitted by the National Assembly, by the French Government, and by the governments of the Associated States, the Assemblée de l'Union française was created with a membership at most of 240, from 50 to 80 being elected by the National Assembly, 25 by the Council of the République, and 75 by the overseas territories. Beginning with its first sitting on December 10, 1947, the stenographic reports of its proceedings have been printed as a supplement to the *Journal officiel* under the title *Débats de l'Assemblée de l'Union française, Compte rendu in extenso des séances.* The report of the ten sittings in December, 1947, extended to 72 pages, and of the twenty sittings, January 13–April 30, 1948, to 354 pages. Reports upon legislative bills and other documents pertinent to the work of the Assembly are printed in a numbered series as *Impressions*, small quarto format; the day by day calendars, under the title *Feuilleton*, in octavo; and the summary of committee proceedings, under the title *Bulletin des*

commissions, all three series being printed by the Imprimerie de l'Assemblée de l'Union francaise.

The Conseil économique is established by title III of the constitution to advise upon bills in economic matters (except in case of the budget) submitted by the National Assembly, to be available for consultation by the Conseil des ministres, and to be consulted obligatorily in determining a "plan économique national." With a membership of 164 representatives of labor, industry, agriculture, etc., as set forth in law 46-2384, October 27, 1946, the Conseil économique met first on March 26, 1947, and has published a stenographic report of its sittings, committee reports and recommendations under the title *Bulletin du Conseil économique*, printed in the format of the *Journal officiel* at the Imprimerie des Journaux officiels. In 1947, the proceedings of the Conseil économique were recorded in 29 numbers of the *Bulletin*, a total of 562 pages, plus an index. The recommendations and reports of Conseil économique are also published separately as a supplement to the *Journal officiel* entitled *Avis et rapports du Conseil économique*, circulated to all members of Parlement. In 1947, seven numbers of the *Avis et rapports* with a total of 96 pages were printed from June 3 to December 20. In 1948, the record of Proceedings has been even more extensive, the *Bulletin* for the sessions from January 6 to May 26, extending to 20 numbers with 660 pages, and the *Avis et rapports* for the same period to 10 numbers with 140 pages.

At this time, attention might well be drawn to the *Deuxième rapport semestriel sur la réalisation du plan de modernisation et d'équipement, résultats au 31 Décembre 1947*, presented in April, 1948, by Jean Monnet for the Commissariat général du plan de modernisation et d'équipement. Although designated as the report for the second half of 1947, it in a way serves as a general report for the whole year. The first part called "Vue d'ensemble" (Paris, 1948, 135 pp.), also being printed in English in the United States, is being accompanied by a volume of detailed reports of the work of the commissions de modernisation in the various branches of the national economy.

In Malaya, the *Federation of Malaya government gazette*, vol. 1, no. 1, February 5, 1948, printed at Kuala Lumpur, by the Government Press, marked the going into effect on February 1 of the Federation of Malaya Order in Council, made in London on January 26, and laid before Parliament on January 27, having the purpose of establishing a strong central government with a federal citizenship. Through the Federation of Malaya Agreement Act, 1948, made on January 21 on behalf of His Majesty and the rulers of the Malay states of Johore, Kedah, Kelantan, Negri, Sembilian, Pahang, Perak, Perlis, Selangor, and Trengganu, these assumed their place in the Federation of Malaya (designated in the Malay language as Persekutuan Tanah Melayu) together with the settlements of Malacca and Penang. The *Government gazette* consists of a main section for the federal government and of separate sections for each of the states and settlements. In the first number, the main section of 112 pages reproduces the basic documents constituting the Federation, and the sections for each state, their constitutions and agreements.

On April 1, 1946, the appearance of the first number of the *Malayan Union Government gazette* had marked the coming into effect of the Malayan Union Order in Council, 1946, which with the return of civil administration to the liberated British Malaya united for the first time all of the Malay states and the settlements of Malacca and Penang. The record of this Union government is contained in the various sections of the *Government gazette*, which was published at Kuala Lumpur until vol. 3, no. 4, January 29,1948.

Under the designation of Malaya, the Supreme Allied Commander, South East Asia, at Kandy, Ceylon, established by proclamation on August 15, 1945, a British

Military Administration for all the Malay states, Singapore, Penang, and Malacca. By proclamation on October 1, 1945, Malaya was divided into a Malay Peninsula division with headquarters at Kuala Lumpur and a Singapore division. Twenty numbers were published from November 2, 1945, to April 1, 1946, of the *British Military Administration, Malaya, gazette, Singapore division*, and fifteen numbers from late 1945 through March 30, 1946, of the *British Military Administration, Malaya, gazette of the Malay Peninsula*, containing the proclamations, orders, rules, regulations, appointments, delegations, and miscellaneous notices. The B.M.A. was terminated as of April 1, 1946, when the Governor of Singapore and the Governor of the Malayan Union assumed office.

Singapore, constituted as a crown colony April 1, 1946, by the Singapore Colony Order in Council, 1946, dated March 27, 1946, the former Straits Settlements having formally ceased to exist as of that date, has published its acts in the *Colony of Singapore Government gazette*, beginning with vol. 1, no. 1, April 1, 1946, and remains outside the Federation as it did outside the Union.

During the occupation of Malaya from early in 1942 to September, 1945, the Japanese Military Administration of the 25th Army apparently published its acts in official gazettes, precise information about which does not seem to be available at the present moment. Singapore constituted a special administration, and the Japanese Military Administration orders seem to have been published also to a certain extent from February 20, 1942, to September 4, 1945, in the English language newspaper *Shonan times*, later called the *Syonan shimbun*.

At the time of the invasion by the Japanese Army, the last issue of the *Federated Malay States Government gazette* at Kuala Lumpur was 1942, no. 1, dated January 5, and the last issue of the *Straits Settlements Government gazette*, 1942, no. 24, dated February 9.

In the same area, no. 1, September 1, 1945, of the *British Borneo Military Administration Gazette*, printed at Kuching in Sarawak, contained the proclamation of June 10, 1945, of the General Officer, commanding the First Australian Corps, establishing the combined Mllitary Administration for North Borneo, Brunei, Labuan and Sarawak under the style British Borneo. The final issue of the *Gazette* was vol. 2, no. 13, July 15, 1946, containing the proclamation terminating the military administration in North Borneo.

In Sarawak, no 1, of vol. 35, dated April 15, 1946, of the *Sarawak Government gazette* marked the return of the civil administration of Rajah Brooke to Kuching, the capital, and no. 9 of June 17, the final issue previous to the cession to the Crown. In the *Sarawak Government gazette*, vol. 1, no. 1, July 1, 1946, is the Sarawak Cession Order in Council, 1946, and the Sarawak Letters Patent, 1946, regarding the framework of the government of the colony of Sarawak, and containing modifications to the Constitution Order of September 24, 1941, printed in vol. 34 of the *Gazette*.

In vol. 1, no. 1, of the *Colony of North Borneo Government gazette*, dated July 15, 1946, printed at Jesselton, is the text of the North Borneo Cession Order in Council, 1946, and of the Labuan Cession Order in Council, 1946. In December, 1941, when the *State of North Borneo official gazette* was last issued under the administration of the British North Borneo Company, the capital was at Sandakan.

Constitutions of the states in the United States, French, and Soviet zones of Germany have been collected and presented in English as well as German text by the Civil Administration Division of the United States Office of Military Government in Germany in a foolscap folio volume of 243 pages under the title *Constitutions of the German Laender* (Berlin, Printed by the Adjutant General OMGUS, 1948), reference to which is facilitated by indexes in English and German. Constitu-

tions were still under consideration in the states of the British zone at the time the very useful compilation was printed.

The Bizonal Economic Administration of the American and British zones in Germany as set up at Frankfurt am Main on June 10, 1947, and as reconstituted on February 9, 1948, has a small official gazette for promulgating its enactments under the title *Gesetz- u. Verordnungsblatt des Wirtschaftsrats für das vereinigte Wirtschaftsgebiet (Amerikanisches und Britisches Besatzungsgebiet in Deutschland)*, the first number of which was dated August 21, 1947. The fourth and last number in 1947, dated December 10, has a six-page supplement with the text of the documents establishing the Administration, and a supplement of thirteen pages to no. 4 of 1948, dated February 26, contains the documents reconstituting the Administration, which were also printed in the *Federal register*, edited by the National Archives of the U. S., vol. 13, no. 40 (February 27, 1948), pp. 887–890.

In the Soviet zone, a central ordinance gazette edited by the Deutsche Justizverwaltung and published by the Deutscher Zentralverlag, Berlin, began with no. 1, May 24, 1947, under the title *Zentralverordnungsblatt herausgegeben namens aller Zentralverwaltungen von der Deutschen Justizverwaltung der sowjetischen Besatzungszone in Deutschland.* Of this gazette containing the Control Council legislation, the Orders (Befehle) of the Sovietische Militär-Administration in Deutschland (SMAD) and mainly the orders and regulations of the Deutsche Verwaltung für Arbeit and Sozialfürsorge, Deutsche Zentralfinanzverwaltung, Deutsche Verwaltung für Handel und Versorgung, Deutsche Justizverwaltung, and the Deutsche Verwaltung für Land- und Forstwirtschaft, twenty-two numbers (268 pp.) with a title page and index of 12 pages were published in 1947. With no. 15 of 1948 (25 pp.), dated May 21, devoted entirely to the SMAD and the Deutsche Wirtschaftskommission (created June 12, 1947, and reconstituted by Befehl no. 32, February 13, 1948), the title is changed significantly to read as follows: *Zentralverordnungsblatt, amtliches Organ der Deutschen Wirtschaftskommission und ihrer Hauptverwaltungen sowie der Deutschen Verwaltungen für Gesundheitswesen, Inneres, Justiz und Volksbildung.*

On March 15, 1948, General Eurico Gaspar Dutra, president of the United States of Brazil, presented his second message to the opening session of the National Congress in accordance with the Constitution of 1946 under the title of *Mensagem apresentada ao Congresso Nacional por ocasião da abertura da sessão legislativo de 1948* (181 pp.). This contains a summary of the reports of the ministries and of the national councils for the year 1947, the first period under the Constitution, and to some extent affords an opportunity to appraise the effect of the changes made.

Of the permanent edition in octavo of the debates, reports, and other proceedings of the Constituent Assembly, February–September, 1946, under the title *Anais da Assembléia Constituinte*, at least eight volumes have been issued through the Imprensa Nacional covering the session until May 10. These proceedings had been printed from day to day during the sittings of the Assembly as a supplement to the *Diário oficial* of Brazil entitled *Diário da Assembléia*, extending to some 5100 pages, small newspaper size, unindexed. Although there seems to have been no official directory in separate form of the members, a souvenir volume by Gastao Pereira da Silva entitled *Constituintes de 46* has been published.

The Assembléia Constituinte had been called into existence by constitutional law no. 13, November 12, 1945. Members of the Câmara dos Deputados and of the Senado Federal, elected on December 2, 1945, were to meet within sixty days as a Constituent Assembly to vote on a new constitution, replacing the one of November 9, 1937. Elections had never been held and the legislative branch had never functioned under the 1937 constitution.

The liberal constitution as voted on September 18, 1946, was printed in the *Diário da Assembléia*, ano I, no. 161, pp. 5069–5110, September 19, and in the *Diário oficial*, ano LXXXV, no. 214, secao I, pp. 13059–13078, of September 19, 1946, becoming effective on the date of publication. It was also reprinted in the *Diário do Congresso Nacional*, ano I, no. 2, September 15, 1946, and in the *Diário oficial* of the same date. On account of slight typographical inaccuracy or omission in the original promulgation, the text was reproduced in correcteed form in the *Diário oficial* of October 15, 1946, ano LXXXV, no. 236, seção I, pp. 14119–14139, and also in the *Diário do Congresso Nacional*, October 15, ano I, no. 16, pp. 237–257. Together with an alphabetical index, it was then printed in 1946 by the Imprensa Nacional in an octavo pamphlet of 95 pages with the title *Constituiçâo dos Estados Unidos do Brasil, 1946*, as no. 533 of the series *Divulgaçâo* of the Imprensa Nacional (price, Cr. $3.50). The text was further printed in very legible type on pp. 3–67 of Vol. VII of 1946, of the official *Coleçãa das leis* (printed in 1946) containing the "Atos da Assembléia Constituinte" though having oddly enough the running title "Atos do poder executivo," and still further on pp. 8–50, of Vol. VIII of 1946 of the *Coleção das leis* (printd in 1947), containing "Atos da Assembléia Constituinte, Atos do poser legislativo, outubro a dezembro."

Almost immediately upon promulgation, the Constitution was made available at least twice at Rio de Janeiro in English unofficial editions, once with the Portuguese and English text in parallel columns of pp. 13–80 of *Brazilian business* (American Chambers of Commerce in Brazil) of vol. XXVI, no. 9, September, 1946, and once with English alone by the British Chamber of Commerce in Brazil as the *Complete text of the Brazilian constitution of 1946* (74 pp.).

Very soon after the promulgation of the Constitution, Pontes de Miranda began to publish his *Comentários a Constituição de 1946* (Rio de Janeiro, Livraria Boffoni, 1946–47, 4 vols.) This set, very well produced at the National Printing Office, takes up the Constitution article by article, showing the developments and changes that have taken place in the Brazilian constitutions—that of the Empire in 1824, that of the Republic in 1891, and those of 1934 and of 1937. Pontes de Miranda had published a three-volume commentary on the Constitution of 1934 and the first and third volumes of the Commentary on that of 1937.

After the signing of the Constitution on September 18, 1946, the Constituent Assembly quickly resolved itself into the two bodies, the Câmara dos Deputados and the Senado Federal, forming the Congresso Nacional. The stenographic reports of the debates in the two chambers, legislative bills, committee reports, etc., have been printed currently as a supplement to the *Diário oficial* under the title *Diário do Congresso Nacional*, beginning with year I, no. 1, September 24, 1946, for the opening sessions of the previous day, being the first sittings of Congress in almost nine years, having been last in session on November 9, 1937. As a means of facilitating the consideration of business in the Câmara dos Deputados, a new set of rules was adopted on September 5, 1947, and were printed in a 64-page pamphlet (Rio de Janeiro, Imprensa Nacional, 1947) under the title *Regimento interno da Câmara dos Deputados*, intended mainly for distribution to the deputies. New rules for the Senado Federal have also been under consideration.

In Yugoslavia, a collection of the texts of the constitutions of the federal republic and of the six people's republics has been published at Belgrade, 1948, by the offices of the federal official gazette (*Službeni list*) in a handy volume of 362 pages under the title *Ustav FNRJ i ustavi narodnih republika* as vol. 22 of the series *Zbirka zakona FNRJ*. The constitution of the Federal People's Republic of Yugoslavia, promul-

gated at Belgrade on January 31, 1946, by the Constituent Assembly and reproduced on pp. 5–55, was issued in an English translation (48 p.) at Washington, D. C., in 1946, by the Information Officer of the Yugoslav Embassy. The constitution of Serbia on pp. 57–115, was promulgated at Belgrade on January 17, 1947; that of Croatia in the Croat language, on pp. 117–165, was promulgated at Zagreb on January 18, 1947; that of Slovenia in the Slovene language, on pp. 167–211, was promulgated at Ljubljana on January 16, 1947; that of Bosnia and Herzegovina, on pp. 213–261, was promulgated at Sarajevo on December 31, 1946; that of Macedonia, on pp. 263–314, was promulgated at Skopje on December 31, 1946; and that of Montenegro, on pp. 315–362, was done at Cetinje on December 31, 1946.

Reëstablishment of an independent national, or federal, government at Belgrade had been marked by the publication of a national official gazette under the title *Službeni list Demokratske Federativne Jugoslavije* (later *Federativne Narodne Republike Jugoslavije*), containing enactments, decrees, regulations, orders, notices, etc., beginning with the number dated February 1, 1945. In this first number was the declaration of November 29, 1943, and the text of official acts promulgated in the intervening period.

In addition, each of the people's republics publishes an official gazette, containing the enactments of the people's assembly of the republic, rules, orders and instructions as well as regulations for the application of federal laws, etc., as follows, the name of the capital being indicated in parenthesis:

Bosnia-Herzegovina (Sarajevo)—*Službeni list Narodne Republike Bosne i Hercegovina.*

Croatia (Zagreb)—*Narodne novine, službeni list Narodne Republike Hrvatske.*

Macedonia (Skopje)—*Službeni vesnik Narodne Republike Makedonije.*

Montenegro (Cetinje)—*Službeni list Narodne Republike Crne Gore.*

Serbia (Belgrade)—*Službeni glasnik Narodne Republike Srbije.*

Slovenia (Ljubljana)—*Uradne list Narodne Republike Slovenije.*

Further, there is an official gazette for the autonomous province of Voivodina (Novi-Sad) in the republic of Serbia under the title: *Službeni list autonomne pokrajine Vojvodine Narodne Republike Srbije.*

The National Association of State Libraries has recently published (Boston, 1947) *Collected public documents of the states, a check list* (IX, 87 pp.), compiled by William S. Jenkins of the University of North Carolina in connection with the Legislative documents microfilm project and completing the series of three check lists published by the Association in 1936, 1937, and 1938, for session laws, statutes, and legislative journals. As Jenkins says, "Collectively they embody some of the richest and most varied research resources in the entire field of government publications." At one time or other, almost every state has issued or published collected documents for a period, somewhat after the fashion of the United States Congressional Series, Arizona, Delaware, Georgia, and Oklahoma are the only states for which collected documents are not reported. A brief preface gives a description of the different types of collected documents series and their development. Under the states arranged in alphabetical order, the titles are given in chronological order, for the individual items the date used on the binding, the period covered by the reports, pagination if given, volumes in set, and the imprint if issued with title-page. Over a ten-year period, Jenkins has been able to check holdings in the principal document collections in each of the states, and has indicated a location for more than 150 items that are exceptionally rare or apparently unique. He has wisely not attempted the almost impossible task of giving contents for the collected documents, and the problem is

one that can be dealt with better state by state, as in Eleanor Ruth Rockwood's *Oregon state documents: check list*, 1845–1925 (Portland, Oregon historical society, 1947, 283 pp.).

In continuation of the publication of election results in Italy since the unification, the Istituto Centrale di Statistica jointly with the Ministero dell'Interno has edited at Rome in 1948 the results of the first election after the downfall of Fascism in a volume of LXVIII, 152 pages entitled *Elezione per l'Assembleia costituente e referendum istituzionale (2 giugno 1946), note illustrative e documentazione statistica.* A two-volume summary work had been edited by the Istituto in 1946–47 under the title *Compendio delle statistiche elettorale italiane dal 1848 al 1934.*

After a lapse of five years a consolidated part of the annual catalog of Dutch official publications entitled *Nederlandse overheidsuitgaven* has reappeared in a volume of 247 pages covering the years 1942–46, and including a special section on pp. 185–202 called "Nederland in den Vreemde" or the Netherlands Government in Exile. This annual catalog, edited under the supervision of Dr. L. Brummel, librarian of the Royal Library at The Hague, was first issued for the year 1929, and previously included also the public documents of the Netherlands overseas possessions.

The Åland Islands Government, celebrating a quarter-century of autonomous administration after the League of Nations in 1922 had decided that they should remain Finnish, published a jubilee volume of 233 pages in Swedish in 1947 at Mariehamn, its capital, entitled *Ålands självstyrelse 25 år, festskrift på uppdrag av Landstingets presidium forfattad av Matts Dreijer.* The volume contains a section on the elections and electoral campaigns, lists of the members of the local parliament and others in the administration, 1922–1947, and constitutes valuable evidence as to the fashion in which one of the decisions of the League of Nations in critical areas has been effective.